

3-2022

Tariffs and Threats in US Trade Policy: Debunking the Myth of "Global Reset"

Julien Chaisse

City University of Hong Kong--School of Law

Debashis Chakraborty

Indian Institute of Foreign Trade

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vjtl>



Part of the [International Law Commons](#), and the [International Trade Law Commons](#)

Recommended Citation

Julien Chaisse and Debashis Chakraborty, Tariffs and Threats in US Trade Policy: Debunking the Myth of "Global Reset", 55 *Vanderbilt Law Review* 239 (2023)

Available at: <https://scholarship.law.vanderbilt.edu/vjtl/vol55/iss2/1>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Journal of Transnational Law by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.



DATE DOWNLOADED: Fri Mar 10 09:32:03 2023

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 21st ed.

Julien Chaisse & Debashis Chakraborty, Tariffs and Threats in US Trade Policy: Debunking the Myth of "Global Reset", 55 VAND. J. Transnat'l L. 239 (2022).

ALWD 7th ed.

Julien Chaisse & Debashis Chakraborty, Tariffs and Threats in US Trade Policy: Debunking the Myth of "Global Reset", 55 Vand. J. Transnat'l L. 239 (2022).

APA 7th ed.

Chaisse, J., & Chakraborty, D. (2022). Tariffs and threats in us trade policy: debunking the myth of "global reset". Vanderbilt Journal of Transnational Law, 55(2), 239-282.

Chicago 17th ed.

Julien Chaisse; Debashis Chakraborty, "Tariffs and Threats in US Trade Policy: Debunking the Myth of "Global Reset", " Vanderbilt Journal of Transnational Law 55, no. 2 (March 2022): 239-282

AGLC 4th ed.

Julien Chaisse and Debashis Chakraborty, 'Tariffs and Threats in US Trade Policy: Debunking the Myth of "Global Reset"' (2022) 55(2) Vanderbilt Journal of Transnational Law 239

OSCOLA 4th ed.

Julien Chaisse & Debashis Chakraborty, 'Tariffs and Threats in US Trade Policy: Debunking the Myth of "Global Reset"' (2022) 55 Vand J Transnat'l L 239

Provided by:

Vanderbilt University Law School

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)



Tariffs and Threats in US Trade Policy: Debunking the Myth of “Global Reset”

*Julien Chaisse and Debashis Chakraborty**

ABSTRACT

In June 2020, the United States pushed for a “reset” of tariffs at the World Trade Organization (WTO). This move was heralded as necessary for the United States to level the uneven playing field caused by “high bound tariff rates.” Ordinarily, the United States perceives trade remedies as a defensive measure. However, in this context, the United States seems to be preemptively acting against any misapplied, anti-dumping duties that it may face. For this reason, a global reset of tariffs will likely find support. It can be counterproductive for the new US administration to pursue such a strategy. If realized, it could result in countries pursuing trade remedies such as anti-dumping duties, which could adversely affect US exporters. In the long term, this could cause a fundamental shift in US trade remedy politics. This Article will argue that citing “high bound tariff rates” to call for a reset of tariffs is unsound. A WTO member can legally impose bound rates, which represent maximum rates. The ground reality remains that most countries apply tariffs that are lower than their bound rates in line with their multilateral commitments. While examining the

* Julien Chaisse is a Professor at the City University of Hong Kong (CityU), School of Law and President, Asia Pacific FDI Network (APFN). The author can be reached at julien.chaisse@cityu.edu.hk. Debashis Chakraborty is Associate Professor at the Indian Institute of Foreign Trade (IIFT). The author can be reached at debashis@iift.edu. We would like to thank Christoph Herrmann, Cristian Rodriguez-Chiffelle, Mia Mikic, Mitsuo Matsushita, and Chang fa Lo for their very helpful comments, hints, and suggestions. We are also grateful to the editors and staff at the *Vanderbilt Journal of Transnational Law* for their constructive comments that have certainly contributed to improving this article. The opinions expressed herewith are the authors' own.

rationale for different tariff policies, this Article will show that a tariff reset will adversely affect both US interests and established multilateral systems.

TABLE OF CONTENTS

I.	INTRODUCTION	240
II.	TOWARDS A RESET OF TARIFFS AT THE WORLD TRADE ORGANIZATION?	243
	A. <i>What Would Be the Scope of the Reset?</i>	244
	B. <i>Meaning and History of Discussion in the United States</i>	246
III.	GETTING THE FACTS (AND THE RULES) RIGHT: WTO TARIFFS REGULATION.....	251
	A. <i>Methods and Approaches to Tariff Reduction</i>	252
	B. <i>Legal Framework for Tariff Negotiations and Renegotiations</i>	254
	C. <i>Consolidation: Bound and Unbound Tariffs</i>	254
	D. <i>Tariff Deconsolidation</i>	257
IV.	UNDERSTANDING THE GAP PROBLEM: BOUND TARIFFS, APPLIED TARIFFS, AND OVERHANG	259
	A. <i>Trade Policy Stakes around Overhang</i>	260
	B. <i>The Practice of Overhang</i>	261
	C. <i>The Overhang Comparative Analysis</i>	263
V.	UNDER THE SHADOW: TARIFFS PREFERENTIALIZATION AND TRADE REMEDIES GLOBALIZATION.....	272
	A. <i>The Impact of Preferential Trade Agreements on Tariffs</i>	272
	B. <i>Developing Countries and Enforcement of Trade Agreements: the Increasing Use of Trade Remedies by Developing Countries</i>	275
VI.	CONCLUSION.....	280

I. INTRODUCTION

In June 2020, the United States put forth its agenda to push for a “reset” of tariffs at the World Trade Organization (WTO).¹ The call for reset was evidenced by US Trade Representative (USTR) Robert

1. Ana Swanson, *Trump Administration to Push for ‘Reset’ of Global Tariffs*, N.Y. TIMES (June 16, 2020), <https://www.nytimes.com/2020/06/16/business/economy/trump-trade-tariffs.html> [https://perma.cc/LUG7-WHDZ] (archived Jan. 9, 2022); Bryce Baschuk, *U.S. Plans a ‘Broader Reset’ of Its WTO Tariff Commitments*, BLOOMBERG (June 17, 2020), <https://www.bloomberg.com/news/articles/2020-06-17/u-s-plans-a-broader-reset-of-its-wto-tariff-committments> [https://perma.cc/2C2C-WX69] (archived Jan. 18, 2022).

Lighthizer testifying to the same, before the US House Ways and Means Committee.² To justify the push for the reset, which is part of a broader trend toward unilateral economic policies,³ it has been argued that the current global economic scenario provided an uneven playing field due to the existence of “very high bound tariff rates,” which were detrimentally affecting US interests.⁴

The push for a reset of tariffs at WTO raises fundamental questions on international trade policy.⁵ One of the oldest instruments of trade is perhaps the imposition of taxes, both on imports and exports.⁶ Taxes served a fiscal function that generated revenue for states and kings while also acting as an interventionist or protectionist tool.⁷ The latter function is now utilised to keep the price of imported goods high, so as to insulate cost-inefficient, domestic producers from foreign competition. Even in the WTO era, tariffs continue to be the basic trade policy instrument. While quantitative restrictions are prohibited under

2. Press Release, Robert Lighthizer, Ambassador, Off. of the U.S. Trade Rep., Opening Statement of Ambassador Lighthizer to the House Ways and Means Committee (June 17, 2020), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/june/opening-statement-ambassador-lighthizer-house-ways-and-means-committee> [<https://perma.cc/8WUX-GCPU>] (archived Jan. 9, 2022).

3. See generally Julien Chaisse & George Dimitropoulos, *Special Economic Zones in International Economic Law: Towards Unilateral Economic Law*, 24 J. INT'L ECON. L. 229 (2021) (discussing the development and proliferation of special economic zones and their importance as a new form of unilateral economic law).

4. *Hearing on the President's 2020 Trade Policy Agenda Before the H. Comm. on Ways and Means*, 116th Cong. 7 (2020) (statement of Robert E. Lighthizer, United States Trade Representative). For a broader elucidation of U.S. trade policy political drivers and objectives, see Robert E. Lighthizer, *Trump's Trade Policy is Making America Stronger: A Response to Critics*, FOREIGN AFFS. (July 20, 2020), <https://www.foreignaffairs.com/articles/china/2020-07-20/trumps-trade-policy-making-america-stronger> [<https://perma.cc/9ST8-28B9>] (archived Jan. 9, 2022).

5. This article does not discuss the political feasibility of the reset in the current U.S. political scenario. The article only takes it as a plausible option given the past four years of developments and that, recently, the first-ever affirmative finding of a particular market situation made by the U.S. Department of Commerce under the new law is just the “latest example of congressional surrender of its constitutional authority over tariff and trade policy to the executive branch.” Daniel J. Ikenson, *Tariffs by Fiat: The Widening Chasm between U.S. Anti-dumping Policy and the Rule of Law*, CATO INST.: POL'Y ANALYSIS NO. 896 (July 16, 2020), <https://www.cato.org/publications/policy-analysis/tariffs-fiat-widening-chasm-between-us-antidumping-policy-rule-law> [<https://perma.cc/9SPE-7HJR>] (archived Jan. 9, 2022).

6. See generally John W. Evans, *The GATT as an Instrument for Tariff Bargaining*, 61 AM. SOC'Y INT'L L. PROC. 141 (1967); Daniel K. Tarullo, *Law and Politics in Twentieth Century Tariff History*, 34 UCLA L. REV. 285 (1986) (examining how the norm of legislative tariff-making was transformed into a norm of unreviewable executive discretion and its role in modern controversies).

7. John H. Jackson, *GATT and Recent International Trade Problems*, 11 MD. J. INT'L L. & TRADE 1, 8–11 (1987).

the WTO framework, there is no bar on employing tariffs.⁸ The member states of the WTO also possess the freedom to raise their tariffs above the limits set forth in the Schedule of Commitments, provided they offer compensation for the same.

Up until the Second World War, tariffs were unilaterally applied by the states and were strictly seen as a domestic policy instrument.⁹ The period after the Second World War fostered a new era during the sixties and seventies where states took into accounts exporters' interests while formulating domestic tariff policies.¹⁰ This penetration of strategic considerations into the policy space ensured that the market dominance of domestic players was no longer fully eroded by foreign competitors. Over the last fifty years of multilateral trade policies, there have been many efforts to reduce tariffs across the world.¹¹ The General Agreement on Tariffs and Trade (GATT) of 1947 was the manifestation of such efforts and has been successful in doing so, especially with respect to industrial goods. However, high tariffs are still prevalent in various sectors including, but not limited to, agriculture, textiles, etc.¹²

The reduction of tariffs has ushered in a new era of trade restrictions that are in fact harder to regulate.¹³ The efforts to reduce tariffs have yielded certain externalities, which have added to the complexity of the current system. This is not to say that applications of tariffs or customs administration have ever been easy.¹⁴ The benefits of such systems lie in the legal security and predictability that it affords to traders. Traders, under such a system, would find it easy to anticipate costs of both imports and exports and consequently would

8. Adam Jakubik & Roberta Piermartini, *How WTO Commitments Tame Uncertainty* 1–4 (World Trade Org., Working Paper ERSD-2019-06, 2019); see also J. S. Stanford, *Treaty Amendment: The Problem of the GATT Tariff Schedules*, 7 CAN. Y.B. INT'L L. 255, 255–62 (1969).

9. Gilbert R. Winham, *GATT and the International Trade Regime*, 45 INT'L J. 796, 797 (1989).

10. For the transition in tariff barriers in key countries and regions, see Silvia Nenci, *Tariff Liberalization and the Growth of World Trade: A Comparative Historical Analysis to Evaluate the Multilateral Trading System*, 34 WORLD ECON. 1809, 1813–17 (2011).

11. *Id.* at 1809–35.

12. Raj Bhala, *Resurrecting the Doha Round: Devilish Details, Grand Themes, and China Too*, 45 TEX. INT'L L. J. 1, 13–76 (2009).

13. See, e.g., Daniel C. K. Chow & Ian M. Sheldon, *Understanding the Economic and Political Effects of Trump's China Tariffs*, 12 WM. & MARY BUS. L. REV. 273 (2021) (discussing the challenges faced by the US in applying tariffs against China and other countries).

14. See Joshua Meltzer, *USTR Lighthizer and U.S. Trade Policy: Right goals, Wrong Strategy*, BROOKINGS (June 26, 2020), <https://www.brookings.edu/opinions/ustr-lighthizer-and-us-trade-policy-right-goals-wrong-strategy/> [https://perma.cc/NXB2-4G6Y] (archived Jan. 9, 2022).

be able to gauge the level of potential competitiveness and realized market access.

The Article argues that the tariff reset, even if seemingly in furtherance of US interests, will have a drastic impact on multilateral systems and would adversely impact the propagator as well. In fact, a tariff reset, if successful, would simply push countries to pursue other trade remedies such as anti-dumping duties. Such a potential substitution of tariff instruments by contingency measures will rather cause a paradigm shift in the global trade remedy politics with negative consequences for the United States too. Part II of the Article will explore the proposed reset in detail, focusing on the scope of the reset and the surrounding circumstances in the United States that prompted the push for a reset. Part III will examine the legal framework governing the processes around tariffs, including reduction, negotiation, consolidation, and deconsolidation. Part IV will look at the concept of “overhang” on a comparative scale, using data to build up a tariff profiles of China, the European Union (EU), India, and the United States. Part V will examine the impact of regionalization on tariffs. Finally, based on the discussions, the analysis concludes in Part VI that a tariff reset would result in increased tariffs applied by the United States on its imports and, in turn, potentially tariff overhung therein. The deepening protectionist sentiments in the United States would cause a wave of dissents across developing countries, forcing them to retaliate either through increasing recourse to trade remedy measures or through elevated applied tariffs. In all, the United States’ call for a tariff reset may end up introducing more complications in global trade canvas than they are hoping to solve.

II. TOWARDS A RESET OF TARIFFS AT THE WORLD TRADE ORGANIZATION?

The push for a reset was highlighted around June 17, 2020, when US Trade Representative Robert Lighthizer publicly stated that “outdated tariff determinations are locked in place that no longer reflect members’ policy choices and economic conditions . . . Many countries with large and developed economies maintain very high bound tariff rates, far above those levied by the United States.”¹⁵ However, trade policy experts refer to some news reports published as early as February 13, 2020, which stated that the United States was mulling on

15. See Ben Winck, *The White House Steps Up Trade Aggression, Calls for ‘Broader Reset’ of Global Tariffs*, BLOOMBERG (June 17, 2020), <https://www.businessinsider.com/wto-tariffs-white-house-lighthizer-reset-rates-trade-policy-economy-2020-6>; see also Swanson, *supra* note 1; Aime Williams, *Top Trade Official Says US Will Seek ‘Broader Reset’ of WTO Tariffs*, FIN. TIMES (June 17, 2020), <https://www.ft.com/content/00cdebfa-e364-4914-a629-29f1fdd290ff> [<https://perma.cc/T6XX-PCFW>] (archived Jan. 9, 2022).

increasing its ceiling on tariffs (its “bound rates”), in a bid to trigger negotiations with the WTO.¹⁶ Would a reset of tariffs at the WTO be legal under WTO law? In a word, yes. The United States can invoke Article XXVIII of the GATT,¹⁷ which allows a nation to lift its tariff rates above the agreed rates. Under Article XXVIII, the United States can inform the WTO of its intentions, provide three years’ worth of statistics as evidence, and encourage countries with substantial trading interests to start negotiations with the United States. However, even if the negotiations do not reach fruition, the United States can still modify its concession unilaterally. If such a step is taken, any contracting party with which the concession was initially negotiated or has a substantial interest, or a principal supplying interest, shall be free (not later than six months after such action) to withdraw substantially equivalent concessions initially negotiated with the applicant contracting party.¹⁸

The scope of the reset will be examined in subpart II.A. This will be followed by a discussion of the consistent positions taken by the United States against the existing trade regime and how it led to the call for a reset (II.B).

A. *What Would be the Scope of the Reset?*

The idea of a reset of tariffs putatively applies to a category of measures that qualifies as ordinary tariffs, tariff quotas, or other charges. The reset would not deal with revenues generated through an indirect taxation route and/or from service fees.

The ordinary tariff is a price-based duty that is applied when a product is imported from another country or jurisdiction.¹⁹ Such a duty termed as a tariff is independent of domestic transactions, which are only subject to a distinct domestic taxation scheme.²⁰ Ordinary tariffs, depending on implementation patterns, are classified under three categories: *ad valorem* tariffs, specific tariffs, and mixed tariffs. Tariffs which are imposed as a set percentage of the value of the imported

16. Bryce Baschuk & Jenny Leonard, *U.S. Weighs Higher Tariff Ceilings in Bid for More Sway Over WTO*, BLOOMBERG (Feb. 13, 2020), <https://www.bloomberg.com/news/articles/2020-02-12/u-s-weighs-higher-tariff-ceilings-in-bid-for-more-sway-over-wto> [https://perma.cc/R8WU-7DT6] (archived Mar. 25, 2022).

17. General Agreement on Tariffs and Trade, art. XXVIII, Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter GATT].

18. *Id.* at art. XXVIII (3).

19. See PETER VAN DEN BOSSCHE & WERNER ZDOUC, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS* (4th ed. 2018); see also Kevin J. Fandl, *National Security Tariffs: A Threat to Effective Trade Policy*, 23 U. PA. J. BUS. L. 340, 344–56 (2021).

20. See Alessandro Nicita, Marcelo Olarreaga, & Peri Silva., *Cooperation in WTO's Tariff Waters?* 1–8 (The Found. For Stud. And Rsch. On Int'l Dev., Working Paper No. 176, 2016).

product are known as *ad valorem* tariffs.²¹ Import duties imposed at a flat rate for each unit (e.g., weight, volume) are known as specific tariffs.²² Mixed or compound tariffs combine the elements of both *ad valorem* and specific tariffs.²³ WTO members almost exclusively rely on *ad valorem* duties, which are transparent, facilitate easy comparison of tariff burdens on price competitiveness, and are even sensitive to changes in product price. Tariffs also have the added benefit of clearly revealing international tariff peaks (i.e., tariffs beyond 15 percent *ad valorem*).²⁴ With regards to valuation of customs, the situation is a bit more complicated than what is usually the case with specific tariffs. In the agricultural sector, specific and compound duties as well as tariff rate quotas are still used by countries, even for major importers such as the United States and the EU.²⁵ Specific duties are effective for products of high value, mainly because they would be insulated from price fluctuations due to inflation or even variation in exchange rates. Given the regressive nature of specific duties, WTO members (and, particularly, the developing countries) support tariff consolidation into *ad valorem* duties, even though specific tariffs are less costly in terms of customs administration.²⁶ It is also pertinent to apply the same tariff policy framework across the member states, so as to easily compare tariff reduction proposals and to apply various tariff reduction formulae.

By extension, tariff quotas employ a combination of both quantitative and tariff restrictions.²⁷ More specifically, tariffs will be imposed based on the quantity of goods that are imported.²⁸ Up to a certain quantitative threshold, no tariff or a lower tariff would be imposed.²⁹ However, the incremental imports beyond such administratively determined thresholds would be charged in groups of higher and increasing tariff rates.³⁰ The primary issue with this method is the lack of an

21. See e.g., Raj Bhala & David Gantz, *WTO Case Review 2000*, 18 ARIZ. J. INT'L & COMP. L. 1, 37–42 (2001).

22. See Glossary, WORLD INTEGRATED TRADE SOLS., <https://wits.worldbank.org/glossary.html> [<https://perma.cc/QG27-ALBE>] (archived Mar. 26, 2022).

23. See Raj Bhala, *Poverty, Islamist Extremism, and the Debacle of Doha Round Counter-Terrorism: Part One of a Trilogy – Agricultural Tariffs and Subsidies*, 9 U. ST. THOMAS L. J. 5, 101 (2011).

24. See United Nations Conference on Trade and Development, *Key Statistics and Trends in Trade Policy 2019: Retaliatory Tariffs between the United States and China*, 9, UNCTAD/DITC/TAB/2019/9 (2020).

25. See Bhala, *supra* note 12, at 57–60.

26. See Winham, *supra* note 9, at 811–13.

27. See Phillip C. Abbott, *Tariff-Rate Quotas: Failed Market Access Instruments?*, 29(1) EUR. REV. AGRIC. ECON. 109, 110–15 (2002); Phillip Abbott & B. Adair Morse, *Tariff Rate Quota Implementation and Administration by Developing Countries*, 29(1) AGRIC. & RES. ECON. REV. 115, 115–24 (2000).

28. See generally Abbott, *supra* note 27; Abbott & Morse, *supra* note 27.

29. See Abbott, *supra* note 27 at 110; Abbott & Morse, *supra* note 27 at 115.

30. See Abbott, *supra* note 27 at 110; Abbott & Morse, *supra* note 27 at 115.

optimal mechanism to allocate quotas with lower tariffs to importers in a legal and equitable manner.

Eventually, there is often a distinction between ordinary tariffs and other charges (denoted as para-tariff measures) that are applied to the import of goods.³¹ This distinction between ordinary tariffs and other tariffs has been recognized in Article II:1(b) of the GATT 1994 and has been specifically addressed in the Understanding on the Interpretation of Article II:1(b).³² Despite the acknowledged distinction, they are treated on a similar footing and the imposition of both categories of tariffs cumulatively cannot exceed the corresponding bound rate by a WTO member.

B. *Meaning and History of Discussion in the United States*

The Trump administration viewed the WTO as a “rotten” system, believing that the existing bound tariffs no longer reflect the economic conditions of different countries across the world.³³ The administration stated that many developed countries maintain a much higher bound ceiling rate than the United States.³⁴ Based on this outlook, the resulting position has been that the current system was skewed against the United States, unduly hurting US workers and exporters.³⁵ The rationale of such a standpoint could be to add pressure on countries with

31. See NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, CLASSIFICATION OF NON-TARIFF MEASURES 33 (Feb. 2012), http://wits.worldbank.org/WITS/docs/Multi-Agency_Classification_of_NTMs.pdf [<https://perma.cc/8TKN-4NTZ>] (archived Jan. 16, 2022); Lorand Bartels & Christian Haberli, *Binding Tariff Preferences for Developing Countries under Article II GATT*, 13 J. INT'L ECON. L. 969 (2010).

32. The Understanding on the Interpretation of Article II:1(b) of GATT 1994 provides, in paragraph 1, that “the nature and level of any ‘duties or charges’ levied on bound tariff items . . . shall be recorded in the Schedules of concessions annexed to GATT 1994 against the tariff items to which they apply.” Understanding on the Interpretation of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 198, ¶ 1 [hereinafter the Understanding]. Additionally, paragraph 2 of the Understanding provides that “[t]he date as of which ‘other duties or charges’ are bound, for the purposes of Article II, shall be 15 April 1994.” *Id.*, ¶ 2.

33. Bibek Debroy, *When Fools Fear to Trade*, ECON. TIMES (June 19, 2018), <https://economictimes.indiatimes.com/blogs/et-commentary/when-fools-fear-to-trade/> [<https://perma.cc/296F-7PDV>] (archived Jan. 13, 2022); see also Deborah Elms & Bhargav Sriganesh, *Trump's Trade Policy: Discerning between Rhetoric and Reality*, 12 ASIAN J. WTO & INT'L HEALTH L. & POL'Y 247, 253–54 (2017); Michael Goodyear, *Helping David Fight Goliath: Preserving the WTO in the Trump Era*, 11 TRADE L. & DEV. 372, 372 (2019).

34. See Winck, *supra* note 15; see also Swanson, *supra* note 1; Williams, *supra* note 15.

35. See Winck, *supra* note 15.

whom the United States does not have a free-trade agreement in general and trade deficit in particular.³⁶

The move to reset global tariffs did not seem to be surprising, given that the United States had consistently declared the current trade regime to be adversely affecting American economic interests (see Table 1). As a result, the Trump administration had pushed for the establishment of a trade deal with the EU in the recent past. The country had even imposed tariffs on steel imported from the EU³⁷ and also threatened auto tariffs if constructive progress was not achieved.³⁸ The auto tariffs have not yet materialized, but the EU has since agreed to import a wider basket of agricultural products and has continuously worked on improving bilateral trade relations.³⁹ The United States had also ended the generalized system of preferences tariff treatment for several countries, including India. The preferential treatment allowed \$5.6 billion worth of Indian exports to enter the United States duty-free but was revoked by President Trump, who stated that India had failed to reciprocate (i.e., did not provide adequate access in its domestic markets).⁴⁰

Back in 2018, the United States levied steel and aluminum tariffs on key allies, including the EU, Canada, and Mexico, with all the affected countries threatening retaliation.⁴¹ This measure was adopted after negotiations to prevent the imposition of tariffs failed.

It appears as though the reset of global tariffs is a natural progression of the trade policies that the United States has been pursuing

36. See Bryce Baschuk, *Why Is the U.S. Renegotiating Its WTO Commitments?*, BLOOMBERG (June 17, 2020), <https://www.bloombergquint.com/quicktakes/why-is-the-u-s-renegotiating-its-wto-commitments-quicktake> [<https://perma.cc/T8U8-946W>] (archived Jan. 9, 2022).

37. See David J. Lynch, Josh Dawsey, & Damian Paletta, *Trump Imposes Steel and Aluminium Tariffs on the E.U., Canada and Mexico*, WASH. POST (Mar. 31, 2018), https://www.washingtonpost.com/business/economy/trump-imposes-steel-and-aluminum-tariffs-on-the-european-union-canada-and-mexico/2018/05/31/891bb452-64d3-11e8-a69c-b944de66d9e7_story.html [<https://perma.cc/AZ2K-R7XQ>] (archived Jan. 9, 2022).

38. See Reuters Staff, *EU Trade Chief Hogan Returns to Washington as Auto Tariffs Loom*, THOMSON REUTERS (Feb. 6, 2020), <https://in.reuters.com/article/us-usa-trade-eu-idINKBN2001EY> [<https://perma.cc/254Z-C7UL>] (archived Jan. 9, 2022).

39. See Debashis Chakraborty, Julien Chaisse, & Zaki Hussain, *Non-tariff Barriers on Auto-components' Exports: Application of Select Indices*, in *INDIA'S TRADE ANALYTICS PATTERNS & OPPORTUNITIES* 299, 299–315 (Biswajit Nag & Debashis Chakraborty eds., 2019); see also Dimitry Anastakis, *Requiem for a Trade Agreement: The Auto Pact at the WTO, 1999-2000*, 34 CAN. BUS. L. J. 313 (2001); Christina L. Davis & Yuki Shirato, *Firms, Governments, and WTO Adjudication: Japan's Selection of WTO Disputes*, 59 WORLD POL. 274 (2007).

40. See *US Ends Special Trade Treatment for India amid Tariff Dispute*, BBC (June 1, 2019), <https://www.bbc.com/news/world-asia-india-48482988> [<https://perma.cc/3KBQ-ZLWU>] (archived Jan. 6, 2022).

41. See Lynch, Dawsey, & Paletta, *supra* note 37; see also *Are Trade Issues Spoiling the Trump-Modi Romance?*, BBC (June 28, 2018), <https://www.bbc.com/news/world-asia-india-44639927> [<https://perma.cc/X2GG-5SAA>] (archived Jan. 6, 2022).

over the years. The country had consistently adopted measures to bring countries to the negotiating table in order to secure deals more favorable to American economic interests.⁴² Further, the trade war with China had drawn attention to the current framework, under which China is allowed to impose a higher rate of tariffs on US imports.⁴³ Such a tilted framework might have very well influenced the decision to push for a reset.

The applied tariff rates across categories are generally much lesser than the corresponding bound tariff rates.⁴⁴ The difference between the two is referred to as “overhang” and is used by countries as a political insurance policy.⁴⁵ This overhang may apprehend exporters since it represents a certain amount of volatility that may come to pass. Overhang allows countries to legally retaliate through tariff hikes. If a global trade reset happens, it is possible that more countries may resort to anti-dumping and countervailing duties, which were once outside the reach of developing countries. Much like the concept of overhang, these remedies are a form of a political insurance that can be used against imports.⁴⁶

The WTO rules are based on the principle of open, fair, and undistorted competition.⁴⁷ Rules on nondiscrimination, national treatment, dumping, and subsidies are all examples of how the WTO tries to maintain fair conditions of trade. Since its inception, the primary aim of the WTO has been to reduce tariffs as much as possible and promote free trade. Under the WTO system, when countries open their markets to goods and services, they “bind” their commitments at a particular rate.⁴⁸ WTO’s policies are built on an ethos that there is a

42. See Goodyear, *supra* note 33, at 381–82; see also Elms & Sriganesh, *supra* note 33, at 255–59; Daniel Griswold, *Assessing President Trump's Trade Priorities*, 39 CATO J. 199, 199–200 (2019); Aaron Seals, *Dismantling the WTO: The United States' Battle Against World Trade*, 28 U. MIAMI BUS. L. REV. 199, 203–06 (2019); Daniel C. K. Chow, William McGuire, & Ian Sheldon, *A Legal and Economic Critique of President Trump's China Trade Policies*, 79 U. PITT. L. REV. 205, 207–09 (2017).

43. See Chow & Sheldon, *supra* note 13, at 286, 297.

44. See Loretta F. Smith, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 935–36 (1991).

45. See Bartels & Haberli, *supra* note 31, at 992–93.

46. See Marc L. Busch, *Lighthizer's Tariff 'Reset' Would Dramatically Change the Politics of US Trade Remedies*, HILL (June 21, 2020), <https://thehill.com/opinion/international/503723-lighthizers-tariff-reset-would-dramatically-change-the-politics-of-us> [https://perma.cc/398K-VTQ6] (archived Jan. 7, 2022).

47. See Robert D. Anderson & Hannu Wager, *Human Rights, Development, and the WTO: The Cases of Intellectual Property and Competition Policy*, 9 J. INT'L ECON. L. 707, 708 (2006); see also Eleanor M. Fox, *Competition Law and the Agenda for the WTO: Forging the Links of Competition and Trade*, 4 PAC. RIM L. & POL'Y J. 1, 30–31 (1995).

48. See WORLD TRADE ORGANIZATION, WORLD TRADE REPORT 2009: TRADE POLICY COMMITMENTS AND CONTINGENCY MEASURES 19 (2009) https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report09_e.pdf [https://perma.cc/QS5C-P6C5] (archived Jan. 7, 2022); see also Debashis Chakraborty, Julien Chaisse, & Jaydeep

definitive link between free trade and economic growth, accrued through natural comparative advantage.⁴⁹ In the current international trade regime, tariffs remain as the basic trade policy instrument.⁵⁰ While quantitative restrictions are prohibited (and have been from GATT 1947), tariffs are recognized as a valid trade measure that a country can adopt.⁵¹

Table 1. Trump and the WTO⁵²

Date	Event / Development	Summary
Dec. 11, 2017	USTR Lighthizer's statement at the WTO Ministerial Conference ⁵³	The statement of USTR Lighthizer can be summarized in three key points: a. Though WTO assumes an important place in global trade, the United States is seriously concerned that the WTO is becoming a litigation-centered organization. Parties use these litigation mechanisms to get concessions that they would never get in a negotiation. b. The understanding of "development" within the WTO must be revisited. The United States feels that the rules are only applied to a few; many countries get a pass due to self-proclaimed development status. The United States feels that it is impossible to negotiate new rules for the WTO when many of the existing ones are not being
Feb. 28, 2018	Statement of the United States at the Dispute Settlement Board Meeting ⁵⁴	The United States expressed the view that the Appellate Body violated Article 17.2 of the Dispute Settlement Agreement. More specifically, the United States criticized the fact that the Appellate Body allowed former members to decide appeals after their terms ended, and the United States felt that this was an overreach by the Appellate Body.
Mar. 21, 2018	USTR Lighthizer's statement before the House Ways &	Though USTR Lighthizer generally addressed the trade policies of President Trump, he raised the following points with regard to the WTO: a. WTO has failed to promote trade liberalization. b. WTO is viewed as a litigation forum rather than as a negotiating forum.

Mukherjee, *Deconstructing Services and Investment Negotiations: A Case Study of India at WTO GATS and Investment Fora*, 14 J. WORLD INV. & TRADE 44, 45–46 (2013).

49. WORLD TRADE ORG., UNDERSTANDING THE WTO: BASICS, THE CASE FOR OPEN TRADE, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact3_e.htm [https://perma.cc/ADF3-MY9L] (archived Jan. 7, 2022).

50. See Goodyear, *supra* note 33, at 375–77.

51. See Elms & Sriganesh, *supra* note 33, at 251.

52. Compiled by the authors from various public sources.

53. Press Release, Robert Lighthizer, Ambassador, Off. of U.S. Trade Rep., Opening Plenary Statement of USTR Robert Lighthizer at the WTO Ministerial Conference (Dec. 11, 2017), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/opening-plenary-statement-ustr> [https://perma.cc/ET3N-9U3U] (archived Jan. 7, 2022).

54. WORLD TRADE ORGANIZATION, STATEMENTS BY THE UNITED STATES AT THE MEETING OF THE WTO DISPUTE SETTLEMENT BODY 10–14 (Feb. 28, 2018), https://geneva.usmission.gov/wp-content/uploads/sites/290/Feb28.DSB_Stmt_as-delivered.fin_public-1.pdf [https://perma.cc/U4UZ-XTNP] (archived Jan. 7, 2022).

	Means Committee ⁵⁵	
Aug. 27, 2018	Statement of the United States at the Dispute Settlement Board Meeting ⁵⁶	The United States felt that the Appellate Body had breached Article 17.6 of the Understanding of the Rules & Procedures. According to the United States, the Appellate Body had exceeded its authority by reviewing the panel's finding of facts.
Aug. 31, 2018	President Trump's statement on withdrawing from the WTO ⁵⁷	During an interview with Bloomberg News, President Trump stated that the "United States would move out of the WTO unless the WTO started treating the United States better."
Apr. 9, 2019	WTO rejects Appellate Body finding on 'Zeroing' ⁵⁸	A WTO panel rejected an Appellate Body finding that "Zeroing" was prohibited, which the panel condemned as a judicial overreach by the Appellate Body. USTR Lighthizer commended the panel's action.
July 23, 2019	Statement of US Ambassador Dennis Shea at the WTO General Council Meeting ⁵⁹	The United States expressed concern that the Appellate Body had deviated from the Dispute Settlement Understanding in too many occasions. In this connection, the United States stressed the importance of having a shared, common understanding of the rules and also the need to have limits on the role of the Appellate Body. The United States welcomed the fact that some countries recognized the deviations of some countries from the Dispute Settlement Understanding. The United States also questioned the proposals by some other member countries who wished to further empower the Appellate Body and diminish the accountability.
July 26, 2019	White House Memorandum on Reforming	The US government expressed concerns that the WTO relied on outdated principles and did not take into account the economic realities of the modern world. As an example, the United States pointed out that seven out of

55. Press Release, Robert Lighthizer, Ambassador, Off. of the U.S. Trade Rep., Opening Statement of USTR Robert Lighthizer to the House Ways and Means Committee (Mar. 21, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/march/opening-statement-ustr-robert> [<https://perma.cc/RCA8-QNT8>] (archived Jan. 7, 2022).

56. Dispute Settlement Body, Minutes of Meeting Held on August 27, 2018, WT/DSB/M/417, ¶¶ 4.2–4.5; ROBERT E. LIGHTHIZER, U.S. TRADE REP., REPORT ON THE APPELLATE BODY OF THE WORLD TRADE ORGANIZATION 37–46 (Feb. 2020), https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf [<https://perma.cc/NMP8-VTGD>] (archived Jan. 7, 2022).

57. Edward Helmore, *Trump: US Will Quit World Trade Organization Unless It 'Shapes Up'*, GUARDIAN (Aug. 30, 2018), <https://www.theguardian.com/us-news/2018/aug/30/trump-world-trade-organization-tariffs-stock-market> [<https://perma.cc/FWM9-SZBT>] (archived Jan. 8, 2022); John Micklethwait, Margaret Talev & Jennifer Jacobs, *Trump Threatens to Pull USA Out of WTO If It Doesn't Shape Up*, BLOOMBERG (Aug. 30, 2018), <https://www.bloomberg.com/news/articles/2018-08-30/trump-says-he-will-pull-u-s-out-of-wto-if-they-don-t-shape-up?srnd=premium>.

58. Press Release, Off. of the U.S. Trade Rep., United States Prevails on "Zeroing" Again: WTO Panel Rejects Flawed Appellate Body Findings (Apr. 9, 2019), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/april/united-states-prevails-%E2%80%9Czeroing%E2%80%9D> [<https://perma.cc/7BJQ-HBXC>] (archived Jan. 8, 2022).

59. *Statements Delivered by Ambassador Dennis Shea – WTO General Council Meeting*, US MISSION GENEVA (July 23, 2019), <https://geneva.usmission.gov/2019/07/23/statements-delivered-by-ambassador-dennis-shea-wto-general-council-meeting-july-23-2019/> [<https://perma.cc/6QFA-GUTM>] (archived Jan. 8, 2022).

	Developing Country Status in the WTO ⁶⁰	<p>the ten wealthiest countries, as measured by GDP per capita, claim to be developing nations on purchasing-power-parity basis.</p> <p>According to the United States, when such wealthy economies claim the developing status, it unduly hurts the other developed economies. China is the perfect illustration of the same. China currently has the second-highest GDP in the world but continues to be treated as a developing nation.</p> <p>As such, the United States feels that there is a need to reform the developing country categorization in the WTO. To this extent, President Trump extended a 90 day period. If substantial changes are not made, the USTR is authorized to:</p> <ol style="list-style-type: none"> No longer treat a country as a developing country for any WTO purposes if the USTR feels the classification is unwarranted. No longer support such a country's membership to OECD.
Dec 6, 2019	US House of Representatives Resolution, H. Res. 746 ⁶¹	<p>The main points can be summarized as follows:</p> <ol style="list-style-type: none"> The United States expressed the willingness to work together with other member states to improve speed, efficiency, and transparency of the WTO. The United States expressed the willingness to work together with other member states and ensure that special and differential treatment be reserved for developing countries in fair and appropriate circumstances. The United States reiterated the need to update the rules of the WTO to reflect the needs of the United States and other free and open economies in the twenty-first century.
Feb. 2020	USTR Report on the WTO Appellate Body ⁶²	<p>The report sets out the various ways in which the Appellate Body does not comply with the existing WTO rules. The report contends that, by not complying with the rules, the Appellate Body has added to the obligations and diminished the rights of the United States.</p> <p>The report highlights various ways in which the Appellate Body has altered the rights of member countries. The report also argues that the overreach by the Appellate Body has contributed to the WTO being a litigation-oriented organization.</p>

III. GETTING THE FACTS (AND THE RULES) RIGHT: WTO TARIFFS REGULATION

The primary objective of GATT 1947 was to reduce tariffs and guarantee these reductions were truly realized by ensuring that tariff reductions were not rendered futile by indirect evasion or erosion mechanisms, such as discriminatory internal measures or quantitative restrictions.⁶³ The initial five rounds of negotiations leading up to the adoption of GATT 1947 were focused on the reduction of industrial tariffs, which were quite high due to the impact of the interwar period of depression.⁶⁴ During the sixth negotiation round, i.e., the Kennedy

60. Memorandum from the White House on Reforming Developing-Country Status in the World Trade Organization (July 26, 2019), <https://www.whitehouse.gov/presidential-actions/memorandum-reforming-developing-country-status-world-trade-organization/> [https://perma.cc/M5WY-M5MU] (archived Jan. 8, 2022).

61. H.R. Res. 746, 116th Cong. (2019).

62. LIGHTHIZER, *supra* note 56, at 1–14.

63. See Shin-Yi Peng, *Renegotiate the WTO Schedules of Commitments: Technological Development and Treaty Interpretation*, 45 CORNELL INT'L L.J. 403, 421 (2012); see also Stanford, *supra* note 8, at 263–65.

64. See Stanford, *supra* note 8, at 255; see also Smith, *supra* note 44, at 924–28, 944.

round, discussions surrounding non-tariff barriers came to the forefront.⁶⁵

Subpart III.A provides a broad overview of the various negotiation rounds of GATT 1947. This subpart will first examine the various approaches under the legal regime for tariff reductions. It will proceed to lay out the procedure for tariff negotiations and renegotiations (III.B), followed by a brief overview of the consolidation procedure (III.C). Finally, a review of the deconsolidation procedure will be undertaken (III.D).

A. *Methods and Approaches to Tariff Reduction*

The cardinal principle underlying Most Favoured Nation (MFN) status forms the foundation of all WTO tariff negotiations.⁶⁶ The principle holds that an agreed-upon tariff reduction should be extended to all other WTO members, even if they were not part of the specific negotiations surrounding the reduction.

The normative foundations of tariff negotiations can be found in Article XXVIIIbis of GATT (entitled "Tariff Negotiations").⁶⁷ This

65. See Smith, *supra* note 44, at 944–46; Jakubik & Piermartini, *supra* note 8, at 2.

66. See Robert Pahre, *Most-Favored-Nation Clauses and Clustered Negotiations*, 55 INT'L ORG. 859, 866–67. (2001).

67. Article XXVIIIbis of GATT reads:

The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities, and conducted with due regard to the objectives of this Agreement and the varying needs of individual contracting parties, are of great importance to the expansion of international trade. The CONTRACTING PARTIES may therefore sponsor such negotiations from time to time. 2. (a) Negotiations under this Article may be carried out on a selective product-by-product basis or by the application of such multilateral procedures as may be accepted by the contracting parties concerned. Such negotiations may be directed towards the reduction of duties, the binding of duties at then existing levels or undertakings that individual duties or the average duties on specified categories of products shall not exceed specified levels. The binding against increase of low duties or of duty-free treatment shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties. (b) The contracting parties recognize that in general the success of multilateral negotiations would depend on the participation of all contracting parties which conduct a substantial proportion of their external trade with one another. 3. Negotiations shall be conducted on a basis which affords adequate opportunity to take into account: (a) the needs of individual contracting parties and individual industries; (b) the needs of less-developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and (c) all other

article enshrines ideas such as reciprocity and mutually advantageous tariff reductions.⁶⁸ It also envisages multilateral trade rounds by indicating that negotiations can take place from time to time.⁶⁹ Tariff negotiations not only include the reduction of existing tariffs but also the binding of tariffs at certain levels. This foolproof nature of the GATT negotiations will ensure that the individual and average tariffs on a particular category of goods does not exceed specified bound rates.

The process of low binding tariffs is equally important as the reduction of high tariffs. The negotiating process, and even the methods by which tariff reductions are brought about, also assumes importance. Paragraph 2(b) of Article XXVIIIbis draws attention to the importance of broad participation among member countries and paragraph 3 highlights the importance of taking into account the needs of developing countries.⁷⁰ Beyond laying out these core principles, Article XXVIIIbis has limited impact.⁷¹

The fundamentals of negotiation, covering modalities of bilateral product negotiations and the application of agreed multilateral processes, are provided in Article XXVIIIbis:2(a). State practice has led to the evolution of three distinct modes of negotiation. These are bilateral negotiations;⁷² multilateral negotiations' formula approach,⁷³ and plurilateral negotiations' sectoral initiatives.⁷⁴

relevant circumstances, including the fiscal,* developmental, strategic and other needs of the contracting parties concerned.

GATT art. XXVIIIbis.

68. See Evans, *supra* note 6, at 141–44.

69. See Kyle Bagwell & Robert W. Staiger, *Will Preferential Agreements Undermine the Multilateral Trading System?*, 108 ECON. J. 1162, 1173 (1998).

70. See Evans, *supra* note 6, at 141–44.

71. See Hong Hwang, Chao-Cheng Mai, & Shih-Jye Wu, *Tariff Escalation and Vertical Market Structure*, 40 WORLD ECON. 1597, 1597–99 (2017).

72. Bilateral negotiations generally take place on a request by a state who holds Initial Negotiating Rights (INR), which are either provided in a country's schedule or are granted on request. These negotiations are subject to the MFN principle and are confidential. See DIMITAR BRATANOV, WTO ACCESSION DIVISION, MODULE 1: AN OVERVIEW OF THE WTO ACCESSION PROCESS 38–42, https://www.wto.org/english/thewto_e/acc_e/day_1_an_overview_of_the_wto_accession_process_dimitar_bratanov.pdf (last visited Jan. 9, 2022) [<https://perma.cc/2DBE-V4AN>] (archived Jan. 9, 2022); WORLD TRADE ORG., WTO ANALYTICAL INDEX: GUIDE TO WTO LAW AND PRACTICE 5–6, https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art28_oth.pdf [<https://perma.cc/V5X6-R5ZJ>] (archived Jan. 9, 2022).

73. There is a focus on developing country tariff reduction formulas in multilateral negotiations. A tariff reduction might be difficult to agree with knowing the peculiarities of the state or the industry. See CRAIG VANGRASSTEK, WORLD TRADE ORG., THE HISTORY AND FUTURE OF THE WORLD TRADE ORGANIZATION 312–21 (2013).

74. In a plurilateral negotiation, a number of important suppliers and importing states are involved. It is usually focused on a set of specific and important items. Such a negotiation method was adopted in the Uruguay round. See *Plurilaterals: Of Minority Interest*, WORLD TRADE ORG., https://www.wto.org/english/thewto_e/whatis_e/tif_e

B. Legal Framework for Tariff Negotiations and Renegotiations

Following the end of a multilateral trade round, the Schedule of Tariff Concessions (the Schedule) of members is revised, and the agreed-upon tariff results from the negotiations are added to the Schedule.⁷⁵ The Schedule is comprised of four parts: (I) tariff concessions, (II) preferential concessions (tariffs relating to trade arrangements as listed in Article I of the GATT 1994 (i.e., historical rights of little relevance today)), (III) concessions on non-tariff measures, and (IV) specific commitments on domestic support and export subsidies on agricultural products. The Schedule also provides that member states shall not impose tariff levels beyond the agreed bound levels.

Article II of the GATT 1994 and its common understanding bring to the forefront the regime of schedules of concessions in WTO law. The schedules constitute the bulk of the WTO's legally binding texts. Article II:1 sets out the MFN principle in tariffs and duties mandating that member countries accord similar treatment to other members, without imposing less favorable terms than what is provided by the relevant member's schedule. Products listed in Part I of the Schedule can only be taxed as per the limits prescribed in the Schedule. If a member charges lower rates, which are often introduced through national tariff legislation and practices, they are subject to the MFN principle. Tariff bindings set forth the maximum amount that can be charged on imported goods. As per the Marrakesh Protocol to the GATT 1994, members can implement reductions in five equal rates subject to monitoring by other members and as per the limits specified in the Schedule.⁷⁶

C. Consolidation: Bound and Unbound Tariffs

In a nutshell, bound rates are the maximum rates at which a WTO member can legally impose tariffs on imports. However, in practice,

/agrm10_e.htm [https://perma.cc/M382-G9U9] (archived Jan. 9, 2022). See generally Rudolf Adlung & Hamid Mamdouh, *Plurilateral Trade Agreements: An Escape Route for the WTO?* (WTO, Working Paper ERSD-2017-03, 2017).

75. See Bernard Hoekman & Petros C. Mavroidis, *MFN Clubs and Scheduling Additional Commitments in the GATT: Learning from the GATS*, 28 EUR. J. INT'L L. 387, 388 (2017).

76. See Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 237 [hereinafter Marrakesh Protocol]. However, there is an exemption made for antidumping and countervailing duties that are applied in tune with Article VI. This exemption extends to all trade remedies with safeguards and balance of payment measures. See General Agreement on Tariffs and Trade 1994, art. II, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S. 187 [hereinafter GATT 1994]; Julien Chaisse & Debashis Chakraborty, *Normative Obsolescence of the WTO Anti-Dumping Agreement- Topography of the Global Use and Misuse of Initiations and Measures*, 6 ASIAN J. INT'L L. 233, 234–36 (2016).

most countries apply tariffs at a rate that is much lower than their bound ceiling rates.⁷⁷ Though the applied tariffs can change, they cannot exceed the bound tariff rates.⁷⁸ Tariffs serve as a revenue source, especially for developing countries. Tariffs are an indicator of the domestic policies and backward participation of a state's global value chain, as consumers, retailers, and exporters dependent on foreign inputs demand lower tariffs.⁷⁹ On the other hand, domestic industries that compete with the imported varieties demand higher tariffs. So, countries generally try to secure a fine balance between demands for protection and the perceived benefits of free trade.

The most important goal of tariff negotiations is aligning tariff ceilings with Article XXVIIIbis of the GATT 1994. Though a consolidation of all the members' schedules might seem efficient, it is not the case. WTO members are not obliged to bind their tariffs in their schedules.⁸⁰ Further, members have the right to increase unbound tariffs by only complying with MFN treatment and not being bound by obligations under the WTO/GATT.⁸¹ As unbound tariffs can be increased, they do not provide adequate legal security for traders. Though industrialised countries have bound their tariffs for a long time, corresponding compliance in developing countries has been slower, owing to their reliance on the imposition of tariffs for revenue, which stemmed from special and differential treatment (S&D) policies.⁸² The poorer compliance patterns in developing countries changed in the Uruguay Round, a negotiating forum which ushered in tariff consolidation and bindings as well. In particular, developing countries agreed to bind their tariffs, which was more significant than actual reductions.

Tables 2–5 below throw light on the tariffs for industrial products bound before and after the Uruguay Round. It shows a marked difference between developed and developing countries in relation to both the number of lines as well as the percentage of lines bound. The case of footwear products (HS 64) in China during the 2011–2018 period is a case in point, where bound and applied duties were 19.01 and 6.04 percent, respectively (see Table 2). Now within this economic sector, tariffs varied across the different types of footwear (e.g., sports footwear, ski-boots, and so on) taking note of perceived threats and domestic interests. For instance, the bound and applied duties on footwear

77. See Peng, *supra* note 63, at 421.

78. See Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT'L L.J. 421, 426–27 (1997).

79. See Jakubik & Piermartini, *supra* note 8, at 16–17.

80. See Thomas Cottier, *From Progressive Liberalization to Progressive Regulation in WTO Law*, 9 J. INT'L ECON. L. 779, 820 (2006); see also Alex Ansong, *Unclogging WTO Decision-Making with the Provisions on Amendments in Article X of the WTO Agreement*, 26 AFR. J. INT'L & COMPAR. L. 227, 230 (2018).

81. See Nicita, Olarreaga, & Silva, *supra* note 20, at 6–7.

82. See Kennedy, *supra* note 78, at 445–47; Cottier, *supra* note 80, at 781.

with outer soles of leather covering the ankle (HS 640351) in China were 25 and 8 percent, respectively. The corresponding figures in the United States are 5.9 and 5.88 percent, in that order, underlining a quite thinner tariff overhang. Now, several developing countries failed to bind all of their tariffs in 1995⁸³ and are technically free to apply whatever tariffs they desire in those sectors. However, the incomplete tariff binding scenario for several mid-to-low-income WTO members does not necessarily mean a time-invariant misuse of this flexibility. For instance, India has not bound the tariff rate for HS 640351,⁸⁴ but the applied tariff⁸⁵ stands at 20 percent.

Another parallel can be drawn with the automobiles sector (HS 87) reported in Table 3. It may be noted that the Trump administration highlighted the case of import duties on Harley Davidson motorcycles, particularly in the context of the Indian market. Looking at the sector of larger motorcycles with engines above 800cc in power (HS 871150), it is observed that the segment is unbound in India, and an applied tariff of 100 percent is imposed on the imports. The corresponding figures in China for this sector are 41.7 and 30 percent, respectively.⁸⁶ Conversely, the United States has a bound rate of 2.4 percent on the larger motorcycle sector and applies the tariff at the bound rate itself.⁸⁷

83. See generally WORLD TRADE ORG., INT'L TRADE CTR., & U.N. CONF. TRADE & DEV., WORLD TARIFF PROFILES 2021, https://www.wto.org/english/res_e/booksp_e/tariff_profiles21_e.pdf [<https://perma.cc/UFP3-59E2>] (archived Jan. 14, 2022) for a comparison of the tariff binding scenario for developed countries and their lower-income counterparts. It is clearly observed that the tariff bindings in several developing and less developed countries are yet to be completed.

84. See *Tariff Analysis Online*, WORLD TRADE ORG., <http://tao.wto.org/> (after registering, hover over "new query" on the left side of the page, then "new CTS query"; under the "reporter year" tab, select "India"; under the "selected products" tab, expand option 64: "[f]ootwear, gaiters and the like; parts of such articles," then expand option 6403: "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather," then expand option 640351: "[o]ther footwear with outer soles of leather," then select option 640351: "[c]overing the ankle"; then click "apply to report" on the left side of the page).

85. The applied duty profile of India by tariff lines can be accessed from the *Tariff Analysis* online resource base of WTO. *Tariff Analysis Online*, WORLD TRADE ORG., <http://tao.wto.org/report/TariffLines.aspx>.

86. See *Tariff Analysis Online*, *supra* note 84 (after registering, hover over "duties faced in export markets" on the left side of the page, then "new CTS query"; under the "reporter year" tab, select "China"; under the "selected products" tab, expand option 87: "[v]ehicles other than railway or tramway rolling-stock, and parts and accessories thereof," then expand option 8711: "[m]otorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars," then expand option 871150: "[w]ith internal combustion piston engine of a cylinder capacity exceeding 800 cc," then select option 871150: "[w]ith internal combustion piston engine of a cylinder capacity exceeding 800 cc," then click "apply to report" on the left side of the page).

87. See *id.* (after registering, hover over "duties faced in export markets" on the left side of the page, then "new CTS query"; under the "reporter year" tab, select "United States of America"; under the "selected products" tab, expand option 87: "[v]ehicles other

The Trump administration has cited the higher tariff in India at times and pushed its developing counterpart for an MFN-applied duty reduction.⁸⁸ The US interest in upward revision of their commitment on one hand and enforcing deeper reforms in applied tariffs in the developing countries on the other can be understood in this context.

D. *Tariff Deconsolidation*

Tariff consolidation is not absolutely binding on the members. Governments are unwilling to cede sovereignty in trade and members have the right to deconsolidate tariffs. However, deconsolidation can only be undertaken after compensating all the members interested in the concession. The procedure for deconsolidation is set forth in Article XXVIII of the GATT 1994 and numerous allied instruments and notes.⁸⁹ In a nutshell, failing to compensate may lead to a suspension of market access rights.

than railway or tramway rolling-stock, and parts and accessories thereof,' then expand option 8711: "[m]otorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars," then expand option 871150: "[w]ith internal combustion piston engine of a cylinder capacity exceeding 800 cc," then select option 871150: "[w]ith internal combustion piston engine of a cylinder capacity exceeding 800 cc," then click "apply to report" on the left side of the page).

88. See Ravi. P. Kumar, *Harley Davidson Bikes Set to Get Cheaper; Modi's Namaste Trump Gift on Tariffs*, LIVE MINT (Feb. 22, 2020), <https://www.livemint.com/auto-news/harley-davidson-bikes-set-to-get-cheaper-modi-s-namaste-trump-gift-on-tariffs-11582280964700.html> [<https://perma.cc/T2HB-35L6>] (archived Jan. 8, 2022).

89. Article XXVIII of GATT reads:

On the first day of each three-year period, the first period beginning on 1 January 1958 (or on the first day of any other period* that may be specified by the CONTRACTING PARTIES by two-thirds of the votes cast) a contracting party (hereafter in this Article referred to as the "applicant contracting party") may, by negotiation and agreement with any contracting party with which such concession was initially negotiated and with any other contracting party determined by the CONTRACTING PARTIES to have a principal supplying interest* (which two preceding categories of contracting parties, together with the applicant contracting party, are in this Article hereinafter referred to as the "contracting parties primarily concerned"), and subject to consultation with any other contracting party determined by the CONTRACTING PARTIES to have a substantial interest* in such concession, modify or withdraw a concession* included in the appropriate schedule annexed to this Agreement. 2. In such negotiations and agreement, which may include provision for compensatory adjustment with respect to other products, the contracting parties concerned shall endeavour to maintain a general level of reciprocal and mutually advantageous concessions not less favourable to trade than that provided for in this Agreement prior to such negotiations. 3. (a) If agreement between the contracting parties primarily concerned cannot be reached before 1 January 1958 or before the expiration of a period envisaged in paragraph 1 of this Article, the contracting party which proposes to modify or withdraw the concession shall, nevertheless, be free to do so and if such action is taken any contracting party with which such concession was initially

negotiated, any contracting party determined under paragraph 1 to have a principal supplying interest and any contracting party determined under paragraph 1 to have a substantial interest shall then be free not later than six months after such action is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party. (b) If agreement between the contracting parties primarily concerned is reached but any other contracting party determined under paragraph 1 of this Article to have a substantial interest is not satisfied, such other contracting party shall be free, not later than six months after action under such agreement is taken, to withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with the applicant contracting party. 4. The CONTRACTING PARTIES may, at any time, in special circumstances, authorize* a contracting party to enter into negotiations for modification or withdrawal of a concession included in the appropriate Schedule annexed to this Agreement subject to the following procedures and conditions: (a) Such negotiations* and any related consultations shall be conducted in accordance with the provisions of paragraph 1 and 2 of this Article. (b) If agreement between the contracting parties primarily concerned is reached in the negotiations, the provisions of paragraph 3 (b) of this Article shall apply. (c) If agreement between the contracting parties primarily concerned is not reached within a period of sixty days* after negotiations have been authorized, or within such longer period as the CONTRACTING PARTIES may have prescribed, the applicant contracting party may refer the matter to the CONTRACTING PARTIES. (d) Upon such reference, the CONTRACTING PARTIES shall promptly examine the matter and submit their views to the contracting parties primarily concerned with the aim of achieving a settlement. If a settlement is reached, the provisions of paragraph 3 (b) shall apply as if agreement between the contracting parties primarily concerned had been reached. If no settlement is reached between the contracting parties primarily concerned, the applicant contracting party shall be free to modify or withdraw the concession, unless the CONTRACTING PARTIES determine that the applicant contracting party has unreasonably failed to offer adequate compensation.* If such action is taken, any contracting party with which the concession was initially negotiated, any contracting party determined under paragraph 4 (a) to have a principal supplying interest and any contracting party determined under paragraph 4 (a) to have a substantial interest, shall be free, not later than six months after such action is taken, to modify or withdraw, upon the expiration of thirty days from the day on which written notice of such withdrawal is received by the CONTRACTING PARTIES, substantially equivalent concessions initially negotiated with applicant contracting party. 5. Before 1 January 1958 and before the end of any period envisaged in paragraph 1 a contracting party may elect by notifying the CONTRACTING PARTIES to reserve the right, for the duration of the next period, to modify the appropriate Schedule in accordance with the procedures of paragraph 1 to 3. If a contracting party so elects, other contracting parties shall have the right, during the same period, to modify or withdraw, in accordance with the same procedures, concessions initially negotiated with that contracting party.

GATT 1994 art. XXVIII.

As per paragraph 6 of the Marrakesh Protocol to the GATT 1994, these procedures can also be applied to deconsolidation of non-tariff concessions which are set forth in Part III of the schedules. Marrakesh Protocol at ¶ 6.

Further, under Article XVIII:7 of the GATT 1994, special procedures exist for deconsolidation by developing countries. Negotiations are aligned to Article XXVIII, under which there is no criteria for compensation. However, the 1994 Understanding sets out the criteria and principles governing compensation.⁹⁰ Overall compensation cannot surpass the concession that was withdrawn. Further, nonreciprocal negotiated solutions are permitted under Article XXVIII, though not bound by three-year periods.

The concept of deconsolidation as well as its procedures hinges on sustaining reciprocal trade relations between mutually advantageous members. This concept would mean that any decision on increasing barriers to market access has to be made after negotiations to decide and finalize appropriate compensation among the interested parties. There are various classes of members that can participate in the negotiations. First, members for whom tariff reductions were negotiated initially and who possess nonreciprocal negotiated solutions under the Schedule form part of a first category. Second, there are members who possess a "principal supplying interest," as per the trade statistics determined by the Committee on Market Access.⁹¹ Third, there is the residual category of members with "substantial interest" who can participate in negotiations.⁹²

Tariff deconsolidation can periodically start from the first day of the three-year period (after negotiations among parties) that originally commenced on January 1, 1958, or as defined by the committee. This would result in a change in schedule but a delay in implementation.

IV. UNDERSTANDING THE GAP PROBLEM: BOUND TARIFFS, APPLIED TARIFFS, AND OVERHANG

If a country does not reduce applied tariffs below their bound levels, other countries could request compensation in the form of higher tariffs of their own. In this respect, the problem is not just limited to the fact that countries have a higher bound rate than the United

90. See Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 231.

91. See the text of the Procedures for Negotiations under Article XXVIII: "At the same time as the notification is transmitted to the secretariat or when the authorization to enter into negotiations has been granted by the Council - or as soon as possible thereafter - the contracting party referred to in paragraph 1 above should communicate to those contracting parties, with which concessions were initially negotiated, and those which have a principal supplying interest, the compensatory adjustments which it is prepared to offer." General Agreement on Tariffs and Trade, *Procedures for Negotiations under Article XXVIII: Guidelines Proposed by the Committee on Tariff Concessions Guidelines*, ¶ 3, C/113 (Nov. 10, 1980).

92. ANWARUL HODA, *TARIFF NEGOTIATIONS AND RENEGOTIATIONS UNDER THE GATT AND THE WTO: PROCEDURES AND PRACTICES* 1-24 (2nd ed. 2018).

States.⁹³ Importers are often wary of the prevailing overhang, since it represents a certain amount of volatility. Countries use overhang as a political insurance policy, and it is a method by which a country can respond to imports in a way that is legal under the WTO framework. USTR Lighthizer seems to have understood the problem well. However, if a tariff reset indeed takes place, the loss of overhang as a political insurance policy would turn the attention of states to trade remedies.

This Part will first delve into the policy considerations behind preferring a certain level of overhang. It will then review the use of overhang in practice. Finally, this Part will detail a comparative study of tariff reforms in the United States, the EU, India, and China.

A. Trade Policy Stakes around Overhang

At the inception of the WTO, many of its member states were mandated to convert their non-tariff barriers to tariff barriers, more specifically to *ad valorem* duties.⁹⁴ In exchange for this conversion, countries were allowed to fix high bound tariff rates, though the applied tariffs of these countries were often far below the bound tariff rates.⁹⁵ The idea behind a high bound tariff rate was to provide countries, which lacked institutional mechanisms to apply trade remedies such as anti-dumping or safeguards, with an alternative instrument to regulate imports.⁹⁶ Even when negotiating these binding tariffs, countries often demanded escape clauses that would be triggered in certain circumstances.⁹⁷ The binding tariff commitment could either be a strong or a weak one. A strong commitment would indicate that the applied tariff would be close to the bound rate, while a weak commitment would imply a larger gap between the bound rate and the applied tariff.⁹⁸

When countries possess weak binding commitments (effectively meaning they have more flexibility), they tend to implement lower applied rates.⁹⁹ This effect of flexibility of tariffs has also found empirical support.¹⁰⁰ It is important to note that a large difference between the applied tariff and a bound tariff reduces the predictability of the import

93. See Jakubik & Piermartini, *supra* note 8, at 2–3.

94. See Kennedy, *supra* note 78, at 447.

95. See Ansong, *supra* note 80, at 227–31.

96. See Committee on Trade and Development, *Note by the Secretariat: Developmental Aspects of the Doha Round of Negotiations*, 32–34, WTO Doc. WT/COMTD/W/143/Rev.5 (Oct. 28, 2010) [hereinafter *Doha Round*].

97. See Bagwell & Staiger, *supra* note 69, at 1173.

98. See *id.* at 1173–77.

99. See *id.* at 1180.

100. See Jeffrey Kucik & Eric Reinhardt, *Does Flexibility Promote Cooperation? An Application to the Global Trade Regime*, 62(3) INT'L ORG. 477, 477–505 (2008).

regime.¹⁰¹ It has also been observed that countries or industries that have alternative trade remedies are more likely to have a strong commitment to binding tariffs closer to the applied rates.¹⁰² It has been suggested that high binding tariffs are also associated with the practice of dirty tariffication, a process by which countries use artificially high domestic prices and artificially low international prices to bind tariffs at a much higher rate than they should be.¹⁰³

However, countries have become increasingly sensitive to these higher binding rates and recent entrants to the WTO have been extended much less overhang in their tariffs.¹⁰⁴ High tariff bindings and the dispersion in tariff bindings between the different member states have complicated efforts to arrive at the best method to further reduce tariff rates.¹⁰⁵ Even if the parties agree on a formulaic approach to further reduce tariffs, due to the difference between binding and applied rates and the wider dispersion among member countries, the formula itself should be sufficiently flexible in order to address the concerns of the member states.¹⁰⁶

B. *The Practice of Overhang*

During the first decade following WTO inception, countries were afforded a larger binding overhang, primarily because they lacked institutional mechanisms to adopt trade remedies. However, some emerging countries are now able to supplement weak binding commitments along with trade remedies.¹⁰⁷ Countries that have both the flexibility associated with weak binding commitments and the institutional support to enact trade remedies tend to apply such measures when there are smaller surges in import. When applying trade remedies, governments are required to demonstrate injury or threat of injury. Because a government's showing of injury can be legally challenged at the WTO, the imposition of trade remedies tends to be more predictable. A government would prefer predictability where there are

101. See Busch, M.L. & Pelc, K.J., *Law, Politics, and the True Cost of Protectionism: The Choice of Trade Remedies or Binding Overhang*, 13(1) WORLD TRADE REV. 39, 40–42 (2014).

102. See *id.*

103. See U.N. Conference on Trade and Development, *Dispute Settlement. World Trade Organization. 3.15, Agriculture*, 8, U.N. Doc. UNCTAD/EDM/Misc.232/Add.32 (2003) [hereinafter *Agriculture*]; Merlinda D. Ingo, *Tariffication in the Uruguay Round: How much Liberalisation?*, 19(4) WORLD ECON. 425, 433 (1996).

104. Constantine Michalopoulos, *WTO Accession for Countries in Transition*, WBG, (Policy Research Working Paper No. WPS1934), June 1998, at 8–10.

105. See Joseph Francois & Will Martin, *Formula Approaches for Market Access Negotiations*, 26(1) WORLD ECON. 1, 3–4 (2003).

106. See *id.*

107. See Busch & Pelc, *supra* note 101, at 40.

smaller surges of import and hence would employ trade remedies.¹⁰⁸ A country would be cautious about using its flexibility and increasing its applied rate because of the doubt it may cause towards its import regime. Countries resort to their overhang in situations where there is a large surge in import. Such a measure would not reduce predictability of the trade regime in the eyes of the investors, as it would be attributed to the exogenous shock of a large rise in import.¹⁰⁹

There is an increasing concern in the WTO that the existence of a tariff overhang undermines the predictability of the trade regimes.¹¹⁰ The correlation between stability and tariff overhang has been discussed previously in the World Trade Report 2009, underlining that tariff overhangs remain a prominent feature of WTO commitments.¹¹¹ Various trade jurisdictions, such as Australia and the EU, have spoken up about tariff overhang.¹¹² The United States has previously expressed its displeasure over this practice and stressed its inclination to maintain no tariff overhang.¹¹³ Conversely, developing countries have spoken up about the need to preserve tariff overhang due to various policy considerations.¹¹⁴

Countries often negotiate tariff bindings rather than applied rates. States often adopt a tariff binding (consequently resulting in a tariff overhang due to the refusal to negotiate applied rates) in situations where capital is mobile across sectors and when interest group pressure can influence domestic tariff policies.¹¹⁵ Another view advocates that countries tend to support weak bindings rather than strong bindings due to the fact that contracting costs and weak bindings may be included to obtain optimal agreements.¹¹⁶ Strong negative correlation has been observed even between tariff commitments and import market power for two reasons. First, a given level of tariff binding entails less flexibility for a market that has a high import power. Unilaterally optimal tariffs increase with increases in market power. Second, an optimal agreement would assign a lower tariff binding to a sector that has high import market power. The provision of tariff bindings is

108. See *Agriculture*, *supra* note 103, at 57; *Ingeo*, *supra* note 103, at 425–28.

109. See *Busch & Pelc*, *supra* note 101, at 43–44.

110. See *Doha Round*, *supra* note 96, at 14.

111. See *WORLD TRADE REPORT*, *supra* note 48, at 106. See generally Mostafa Beshkar, Eric W. Bond, & Youngwoo Rho, *Tariff Binding and Overhang: Theory and Evidence*, 97(1) J. INT'L ECON. 1, 1–13 (2015).

112. See Negotiating Group on Market Access, *Minutes of the Meeting dated December 2-3, 2002*, at 14–17, WTO Doc. TN/MA/M/5 (July 11, 2003).

113. See Negotiating Group on Market Access, *Minutes of the Meeting dated April 14-16, 2003*, at 19, WTO Doc. TN/MA/M/7 (Dec. 2, 2003).

114. See *Doha Round*, *supra* note 96, at 9.

115. See Giovanni Maggi & Andrés Rodríguez-Clare, *A Political-Economy Theory of Trade Agreements*, 97(4) AM. ECON. REV. 1374, 1374–83 (2007).

116. See Henrik Horn, Giovanni Maggi, & Robert W. Staiger, *Trade Agreements as Endogenously Incomplete Contracts*, 100(1) AM. ECON. REV. 394, 397 (2010).

essentially a balance between flexibility and commitment, and trade policy flexibility would entail a greater terms-of-trade externality in sectors with higher import market power. Consequently, an optimal tariff binding would have a negative correlation with import market power.¹¹⁷ Additionally, it has been observed that a larger binding overhang is associated with less petitions for trade remedies.¹¹⁸ Tariff overhangs are particularly useful during conditions of instability, and, when states expect a prolonged period of instability, it is likely that they will adopt larger tariff overhangs.¹¹⁹

C. *The Overhang Comparative Analysis*

An analysis of the tariff reform scenario in four select jurisdictions—namely China, the EU, India, and the United States—was conducted, as displayed in Tables 2–5. The idea was to compare the scenario in two leading developed jurisdictions (the EU and United States) with two developing countries (China and India). The Trade Map data show that these four entities collectively accounted for 61.6 percent and 59.3 percent of global imports during 2001 and 2020, respectively.¹²⁰ For this analysis, tariff-related data was drawn from the World Bank's World Integrated Trade Solution (WITS) database.¹²¹ Sixteen industry sectors at HS¹²² two-digit classification (i.e., at the chapter level) were selected for the analysis here, which collectively accounted for 58.2 percent and 58 percent of global exports during 2001 and 2020, respectively.¹²³ In addition, these product groups are

117. See Beshkar, Bond, & Rho, *supra* note 111, at 2.

118. See Busch & Pelc, *supra* note 101, at 43–44.

119. See Oliver Lorz & Susanna Thede, *Tariff Overhang and Aid: Theory and Empirics* 4 (MAGKS Joint Discussion Paper Series in Econ., Working Paper No. 03/2018, 2018).

120. The data for the analysis has been drawn from Trade Map database. See *Trade Map*, INT'L TRADE CTR., https://www.trademap.org/Product_SelCountry_TS.aspx [<https://perma.cc/72KL-TSFT>] (archived Jan. 14, 2022).

121. *World Integrated Trade Solution Database*, WORLD BANK, <https://wits.worldbank.org/> [<https://perma.cc/X4JK-Y6Q5>] (archived Jan. 14, 2022).

122. Harmonized System (HS) is the international convention on classification of trade data that all the countries adopt for reporting commercial transactions of merchandise trade flows. For details, see *HS Convention*, WORLD CUSTOMS ORG., http://www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs_convention.aspx [<https://perma.cc/ZHT4-5YJ5>] (archived Mar. 26, 2022).

123. The HS trade data classification system is arranged in the following manner. First, the traded commodities are classified under 98 *chapters* (i.e., trade data classification at 2-digit). For instance, the edible fruits and nuts are placed under HS 08. Then all the products coming under these categories are classified under several *tariff headings* (i.e., trade data classification at 4-digit). For instance, the citrus fruit, fresh or dried are placed under HS 0805. After this, all the citrus fruits are classified under several *tariff sub-headings* (i.e., trade data classification at 6-digit). For instance, fresh or dried oranges are placed under HS 080510. The chapters, headings and sub-headings

crucially integrated with global value chains, underlining the importance of a soft tariff policy in propagating cross-border movements of these commodities.¹²⁴ As these product groups consistently account for a significant proportion of global trade flows, the tariff policies of the four leading players on their import demonstrate interesting insights.

The analysis has been conducted with respect to the following indicators:

- First, the tariff data can be obtained from WITS for MFN applied and bound rates, which provide an idea about the prevailing tariff overhang in a country. In addition, data is also available for applied effective tariff (AHS), which relates to the lowest available tariff for a product. If a country is part of a regional trade agreement (RTA) and consequently applies a preferential tariff on imports coming from bloc partners, that will then be considered as the corresponding AHS tariff. On the other hand, if there are no preferential tariffs, the MFN applied tariff is considered.¹²⁵ Therefore, the AHS tariff might be lower than the corresponding MFN tariff rates. In order to understand the actual reform perspective, the trade-weighted AHS tariff rates are compared with the trade-weighted bound rates in the current analysis. If the trade-weighted AHS tariff rates are declining at a sharper rate *vis-à-vis* the corresponding trade-weighted bound tariff rates, it can be said that the importing country is adopting a more lenient tariff regime, thereby embracing a weak commitment.
- Second, WITS reports the value of total imports under the HS two-digit level commodity groups as well as the corresponding figures for imports coming through duty-free tariff lines. If it is observed that over the period the proportional importance of duty-free imports is increasing in a country, then it can be considered as a signal of trade policy reform.
- Finally, there is a need to understand the evolving focus of the policymakers in a country towards reform. For cross-country comparability, imposition of a tariff in excess of 15 percent (a fixed benchmark) at the HS six-digit level is defined as an

are same for all the countries and are used extensively for noting reform commitments in trade negotiations. Finally, the trade classifications under HS 8/10 digit levels are called tariff lines, which may differ across countries.

124. See Vilas Pathikonda & Thomas Farole, *The Capabilities Driving Participation in Global Value Chains* 5–10 (WBG, Pol'y Rsch. Working Paper No. WPS7804, 2016).

125. *World Integrated Trade Solution: Protection Data Query-Types of Tariffs*, WORLD BANK, https://wits.worldbank.org/wits/wits/witshelp/content/data_retrieval/p/intro/c2.types_of_tariffs.htm [<https://perma.cc/JB2W-EZDL>] (archived Jan. 13, 2022).

international peak tariff (IPT).¹²⁶ This benchmark indicates whether a country is, over time, becoming more or less intent to protect its domestic players in certain sub-segments within an HS chapter at the two-digit level. Therefore, rising presence of IPT lines within an HS two-digit product group over the period indicates deepening of the protectionist mindset and vice versa.

Tables 2–5 report the tariff scenario for the four selected jurisdictions—China, EU, India, and the United States, respectively. In the first set of columns, the average Trade Weighted Average Tariff (WAT)¹²⁷ under effective applied tariff classification (AHS)¹²⁸ has been reported, which can be compared with the average WAT (Bound), summarized in the following set of columns. Free imports as a percentage of total import, and international peaks as a percentage of total tariff lines (i.e., the actual number of products being imported) are reported next. For all four series, decadal average tariffs have been presented to understand the temporal perspective of reform.

Table 2 reports the tariff scenario in China. It is observed that from 2001–2010, in a number of sectors the average AHS tariff has been higher than the corresponding bound figure. These results primarily arise from the applied–bound duty gap from 2001–2003, following China’s WTO accession. From 2011–2018, however, the applied tariff rates remained within the bound rates. It is also observed that the percentage of duty-free lines of imports increased, while the recourse to IPT gradually fell. Only in the case of rubber products (HS 40), the use of IPT increased from 2017 onwards. Applied tariff rates during

126. See André M. Nassar, Zuleika Arashiro, & Marcos S. Jank, *Tariff Spikes and Tariff Escalation*, in HANDBOOK ON INTERNATIONAL TRADE POLICY 222, 222 (William A. Kerr & James D. Gaisford eds., Edward Elgar Publishing 2007).

127. The trade weighted average tariff (WAT) for a chapter (e.g., edible fruit and nuts, i.e., HS 08) can be computed in the following manner. Suppose a country (say, China) is importing a number of tariff subheadings under this category—e.g., fresh or dried grapefruit (HS 080540), fresh or dried clementines including monreales (HS 080522), and so on. The import value under each subheading can be summed to arrive at the total imports under HS 08 in China. The WAT on HS 08 imports in China can be obtained when the tariff rate under each subheading is multiplied by the corresponding trade weights (i.e., share in gross import under HS 08) and the products are then summed. For further details, the formula for the WAT can be accessed from MIA MIKIC & JOHN GILBERT, *TRADE STATISTICS IN POLICYMAKING – A HANDBOOK OF COMMONLY USED TRADE INDICES AND INDICATORS* 102–03 (United Nations, rev. ed. 2009), https://www.unescap.org/sites/default/files/0%20-%20Full%20Report_27.pdf [<https://perma.cc/3ZG2-KXU3>] (archived Dec. 24, 2021).

128. Effective Applied Tariff is defined in the following manner: “WITS uses the concept of effectively applied tariff which is defined as the lowest available tariff. If a preferential tariff exists, it will be used as the effectively applied tariff. Otherwise, the MFN applied tariff will be used.” WORLD BANK, *supra* note 125.

Table 2: Tariff Profile of China¹²⁹

HS Code	Description	Average Trade Weighted Tariff Rates						Free Imports as % of Total Import				International Peaks as % of Total Tariff Lines			
		Applied Effective Tariff			Bound Tariff			1992-00	2001-10	2011-18	2011-18	1992-00	2001-10	2011-18	2011-18
		1992-00	2001-10	2011-18	2001-10	2011-18	2011-18								
28	Inorganic Chemicals	14.96	6.24	3.85	6.18	5.39	5.39	0.00	6.38	17.56	17.56	32.02	0.08	0.00	0.00
29	Organic Chemicals	13.60	5.68	3.43	5.17	4.21	4.21	0.00	1.97	15.79	15.79	29.37	0.19	0.00	0.00
30	Pharmaceuticals	14.41	4.59	3.42	4.26	4.34	4.34	0.34	5.19	12.53	12.53	27.84	0.00	0.00	0.00
39	Plastic Articles	22.24	8.86	5.21	6.92	6.90	6.90	0.00	3.07	17.04	17.04	94.10	5.91	0.00	0.00
40	Rubber Articles	21.69	13.12	7.87	12.29	12.08	12.08	1.41	4.19	27.54	27.54	46.46	18.79	20.36	20.36
42	Leather Products	46.61	13.64	9.74	12.11	11.45	11.45	0.00	0.63	10.91	10.91	97.92	49.78	26.97	26.97
61	Apparels, Knitted or Crocheted	51.10	13.14	8.34	14.87	15.18	15.18	0.00	19.62	39.31	39.31	100.00	64.35	39.78	39.78
62	Apparels, Not Knitted or Crocheted	49.98	15.28	11.46	15.81	16.40	16.40	0.00	12.20	23.71	23.71	100.00	76.71	56.84	56.84
64	Footwear Products	42.14	14.60	6.04	15.95	19.01	19.01	0.00	3.32	50.11	50.11	100.00	60.63	38.74	38.74
72	Iron and Steel	10.64	4.88	3.63	4.57	4.16	4.16	0.00	9.44	19.99	19.99	12.41	1.13	0.00	0.00
73	Articles of Iron and Steel	16.41	7.55	7.72	7.25	8.27	8.27	0.00	0.72	4.40	4.40	36.23	13.71	10.26	10.26
74	Copper Products	6.65	2.55	0.90	3.04	2.41	2.41	0.00	27.99	69.94	69.94	17.59	7.63	7.43	7.43
84	Machinery and Equipment	16.99	5.24	3.54	4.40	4.25	4.25	0.00	36.02	43.14	43.14	51.33	6.24	2.91	2.91
85	Electrical Machinery and Equipment	19.39	3.26	1.34	2.66	2.17	2.17	0.00	62.51	62.41	62.41	48.16	12.37	8.20	8.20
87	Vehicles and Transport Equipment	64.99	22.43	19.19	17.21	20.02	20.02	0.00	0.07	0.84	0.84	76.08	36.54	24.45	24.45
90	Various Instruments	14.51	7.23	5.14	7.43	7.14	7.14	0.00	7.49	15.51	15.51	29.01	8.82	6.01	6.01

129. The HS chapter-wise average figures reported in Table 2 have been computed by the authors from WITS data. See WORLD BANK, *supra* note 125.

2011–2018 declined for all the sectors, excluding articles of iron and steel (HS 73).

Table 3 summarizes the tariff scenario for the EU. The wedge between the applied tariff during 1991–2000 and the bound tariff from 1995 to 2000 is an indication of the process of tariff reforms in the aftermath of the WTO's inception in 1995. It is observed that from 2001 to 2010, the average AHS tariff has been higher than the corresponding bound figure in iron and steel (HS 72), indicating possible protectionist intents. The rise in trade-weighted bound tariffs during 2011–2018 for several key product groups over the preceding period—namely inorganic chemicals (HS 28), footwear (HS 64), articles of iron and steel (HS 73), copper (HS 74), and machinery (HS 84)—is worth mention. In these sectors, certain repercussions in trade outcomes have been observed in the last two columns. For instance, in HS 28, 74, and 84, while the relative importance of duty-free imports declined from 2011 to 2018, the presence of IPT has increased for the footwear sector. A look into the raw tariff data signifies an upward movement in average tariffs since 2014, which has influenced the proportion of duty-free imports as well.

Table 4 presents the tariff scenario for India. Like the EU, the wedge between the applied tariff during 1992–2000 and the bound tariff from 1996 to 2000 is understood in light of the higher tariffs prevailing in the pre-WTO days. Given the fact that, as a developing country, India enjoyed a relatively higher bound duty, the applied rates are generally within the bound rates, barring the exception of HS 85 (electrical machinery and equipment) during 2001–2010. From 2001 to 2010, the proportion of free imports declined for HS 28, 30, 72, and 87, underlining a change of tariff policy during the recession years (2008–2010). The process of tariff reform continued in the subsequent period, as reflected in the fall in IPTs from 2011 to 2018. It may be noted that in several industrial product groups (e.g., HS 42 and 64), India is yet to take a binding commitment for all the tariff lines, with the possibility to extend support to domestic players, if required.¹³⁰

130. See Garry Pursell, Nalin Kishor, & Kanupriya Gupta, *Manufacturing Protection in India Since Independence* 21 (Austl. S. Asia Rsch. Ctr., Working Paper No. 2007/07, 2007).

Table 3: Tariff Profile of the EU¹³¹

HS Code	Description	Average Tariff Rates						Free Imports as % of Total Import			International Peaks as % of Total Tariff Lines		
		Applied Effective Tariff			Bound Tariff			1991-00	2001-10	2011-18	1991-00	2001-10	2011-18
		1991-00	2001-10	2011-18	1995-00	2001-10	2011-18						
28	Inorganic Chemicals	2.70	1.50	1.63	3.64	3.31	3.53	64.37	64.89	63.89	0.00	0.00	0.00
29	Organic Chemicals	4.13	2.35	2.82	3.19	3.41	3.31	37.02	48.67	49.09	1.09	0.00	0.00
30	Pharmaceuticals	2.45	0.00	0.00	0.10	0.03	0.53	61.43	100.00	100.00	0.19	0.00	0.00
39	Plastic Articles	6.11	3.53	3.62	5.62	5.48	5.41	27.31	36.25	36.97	0.68	0.00	0.00
40	Rubber Articles	2.39	1.57	1.44	2.58	2.53	2.44	48.37	55.98	58.41	0.50	0.00	0.00
42	Leather Products	2.67	3.22	2.88	5.19	5.35	5.35	36.69	15.73	20.75	0.86	0.00	0.00
61	Apparels, Knitted or Crocheted	7.24	6.32	5.52	11.82	11.81	11.80	38.54	41.62	48.37	0.08	0.00	0.00
62	Apparels, Not Knitted or Crocheted	7.80	7.14	6.21	11.66	11.60	11.58	34.29	32.84	40.22	0.02	0.00	0.00
64	Footwear Products	6.12	8.34	8.86	9.81	10.74	12.16	26.33	12.62	15.72	9.23	4.58	6.33
72	Iron and Steel	2.29	0.81	0.17	0.72	0.60	0.55	43.70	81.28	94.11	0.00	2.20	0.00
73	Articles of Iron and Steel	3.18	1.37	1.33	2.10	2.09	2.23	29.41	51.41	57.12	0.02	0.08	0.00
74	Copper Products	0.59	0.49	0.52	0.79	0.90	1.07	88.30	86.83	86.05	0.00	0.00	0.00
84	Machinery and Equipment	2.26	0.63	0.69	0.99	1.00	1.11	27.76	66.24	62.26	0.05	0.00	0.00
85	Electrical Machinery and Equipment	4.06	1.62	1.01	2.01	2.24	1.68	29.74	58.87	65.84	1.00	0.00	0.00
87	Vehicles and Transport Equipment	7.90	6.54	4.27	8.04	8.23	7.76	10.36	20.07	40.48	5.67	3.14	2.23
90	Various Instruments	3.42	0.86	0.65	1.52	1.11	1.01	21.16	66.28	72.75	0.27	0.00	0.00

131. The HS chapter-wise average figures reported in Table 3 have been computed by the authors from WITS data. See WORLD BANK, *supra* note 118.

Table 4: Tariff Profile of India¹³²

HS Code	Description	Average Tariff Rates						Free Imports as % of Total Import			International Peaks as % of Total Tariff Lines		
		Applied Effective Tariff			Bound Tariff			1991-00	2001-10	2011-18	1991-00	2001-10	2011-18
		1992-00	2001-10	2011-18	1996-00	2001-10	2011-18						
28	Inorganic Chemicals	38.45	15.17	5.93	37.84	37.68	37.45	2.78	0.22	8.49	98.30	39.34	0.00
29	Organic Chemicals	34.51	15.69	6.01	36.89	37.63	38.09	0.00	1.80	9.95	95.43	38.17	0.16
30	Pharmaceuticals	29.40	18.71	9.61	32.97	30.79	32.77	18.77	0.69	3.04	84.32	38.97	0.00
39	Plastic Articles	40.37	17.76	7.23	40.00	40.00	40.00	0.00	0.91	5.71	100.00	39.98	0.00
40	Rubber Articles	45.45	19.46	9.94	38.98	36.76	34.25	0.00	0.37	6.54	99.29	41.01	1.69
42	Leather Products	47.10	18.88	9.70	.	.	.	0.00	0.62	2.31	100.00	40.19	0.23
61	Apparels, Knitted or Crocheted	46.91	19.36	8.22	38.56	37.34	36.32	0.00	0.07	11.84	90.66	35.67	0.00
62	Apparels, Not Knitted or Crocheted	47.09	20.30	6.23	39.39	39.02	38.85	0.00	1.30	20.62	85.77	32.38	0.00
64	Footwear Products	47.10	18.64	10.23	.	.	.	0.00	1.16	3.50	100.00	39.56	8.41
72	Iron and Steel	33.16	21.17	5.12	39.96	39.94	39.93	9.35	2.05	16.88	97.65	59.90	0.00
73	Articles of Iron and Steel	39.57	18.69	9.06	40.00	40.00	40.00	0.00	0.40	6.47	100.00	40.00	0.00
74	Copper Products	40.10	15.78	4.07	40.00	40.00	.	0.00	3.21	21.00	100.00	39.96	0.00
84	Machinery and Equipment	28.98	13.68	5.51	23.50	22.66	23.27	1.08	13.29	23.68	94.24	36.80	0.00
85	Electrical Machinery and Equipment	34.16	10.55	3.61	13.65	9.31	9.10	2.66	36.18	55.44	93.44	30.84	0.00
87	Vehicles and Transport Equipment	46.97	27.34	14.88	40.00	40.00	40.00	0.18	0.06	3.42	99.54	57.62	38.41
90	Various Instruments	32.44	14.37	5.93	30.50	30.19	29.97	0.07	10.00	19.06	94.83	35.61	0.00

132. The HS chapter-wise average figures reported in Table 4 have been computed by the authors from WITS data. See WORLD BANK, *supra* note 118.

Table 5 shows the tariff scenario for the United States. Like the other jurisdictions, for a few product groups during 2001–2010 and 2011–2018, the average AHS tariff has been higher than the bound rates (e.g., HS 29 (organic chemicals) and HS 90 (various instruments)). However, a more interesting observation is that in the United States, the average applied AHS has increased for almost all the sectors from 2011 to 2018, and a similar transition has been observed in corresponding weighted bound rates as well. While the proportion of IPT has increased for only HS 42 (leather) and HS 87 (vehicle and auto-products), for several other product groups (HS 28, 39, 40, 42, and 84) the importance of duty-free imports has come down. In other words, the tariff rise in the United States has primarily concentrated within the 0–15 percent band.

A few general observations emerge from the Tables. First, the decline in WAT over the period in China, EU, and India underlines the gradual move towards tariff reforms, and the consequent emergence of weak commitments. However, as the current analysis focuses on the AHS rather than MFN tariff, the underlying role of multilateral commitments and regional compulsions might play a role here. The rise of the average tariff in the United States during 2011–2018 has shown a transformation in mindset that culminated in its withdrawal from the negotiations over the Trans-Pacific Partnership in 2017. Nonetheless, on most occasions, the applied tariff has been within the corresponding bound duties, underlining compliance with core WTO norms. This, in effect, led to strong commitments in the United States across sectors. Second, applied duties in excess of bound duties in cases of certain country-product combinations might come from two possibilities: (a) conversion of non-*ad-valorem* duties in tariff equivalents and (b) presence of relatively higher tariff rates among the traded product groups. As such instances became relatively scarce from 2011 to 2018, the broad compliance on this front can be ascertained. Finally, the general rise in free imports as a percentage of total import and decline in IPT as a percentage of total tariff lines also indicate an improving tariff discipline. Nonetheless, the strong emerging commitments at home and the contrasting experience of other countries had shaped the Trump administration's perception towards a tariff reset.

Table 5: Tariff Profile of the United States¹³³

HS Code	Description	Average Tariff Rates								Free Imports as % of Total Import				International Peaks as % of Total Tariff Lines			
		Applied Effective Tariff				Bound Tariff				1991-00	2001-10	2011-18	2011-18	1991-00	2001-10	2011-18	2011-18
		1991-00	2001-10	2011-18	1995-00	2001-10	2011-18	1991-00	2001-10								
28	Inorganic Chemicals	0.95	0.59	0.70	1.22	0.96	1.13	68.92	80.61	75.64	0.83	0.01	0.00	0.00	0.00	0.00	0.00
29	Organic Chemicals	4.79	3.19	3.04	2.39	2.44	2.53	20.80	27.27	31.74	2.15	0.00	0.00	0.00	0.00	0.00	0.00
30	Pharmaceuticals	1.06	0.00	0.00	0.00	0.00	0.38	73.38	99.97	99.96	1.20	0.02	0.00	0.00	0.00	0.00	0.00
39	Plastic Articles	3.17	2.34	2.63	3.80	3.88	4.01	22.26	44.44	37.78	0.58	0.15	0.00	0.00	0.00	0.00	0.00
40	Rubber Articles	1.81	1.73	1.87	2.01	2.45	2.58	44.17	51.74	45.48	0.35	0.11	0.00	0.00	0.00	0.00	0.00
42	Leather Products	8.82	7.88	8.14	7.98	8.09	8.28	4.98	4.97	4.36	20.05	14.69	14.99	0.00	0.00	0.00	0.00
61	Apparels, Knitted or Crocheted	13.91	11.52	10.85	13.99	13.82	14.42	4.93	15.35	23.96	51.15	30.34	20.61	0.00	0.00	0.00	0.00
62	Apparels, Not Knitted or Crocheted	10.89	8.79	8.89	10.71	10.33	10.57	5.61	15.29	15.56	30.62	19.12	14.40	0.00	0.00	0.00	0.00
64	Footwear Products	13.55	11.45	11.99	11.60	10.88	14.57	0.49	3.52	4.47	25.66	19.04	16.66	0.00	0.00	0.00	0.00
72	Iron and Steel	3.22	0.30	0.13	0.22	0.24	0.27	14.45	78.70	95.29	0.01	0.01	0.00	0.00	0.00	0.00	0.00
73	Articles of Iron and Steel	2.71	1.02	1.09	1.59	1.33	1.41	23.07	63.77	66.75	0.07	0.09	0.00	0.00	0.00	0.00	0.00
74	Copper Products	1.13	0.66	0.68	1.42	1.46	1.53	46.91	64.62	66.77	0.12	0.05	0.00	0.00	0.00	0.00	0.00
84	Machinery and Equipment	1.41	0.45	0.51	0.58	0.55	0.60	39.03	79.90	78.17	0.08	0.09	0.00	0.00	0.00	0.00	0.00
85	Electrical Machinery and Equipment	1.83	0.67	0.64	0.65	0.78	0.76	48.81	69.28	70.26	0.27	0.08	0.03	0.00	0.00	0.00	0.00
87	Vehicles and Transport Equipment	1.75	1.15	1.11	4.29	3.66	3.77	40.89	52.26	52.71	0.63	0.49	0.52	0.00	0.00	0.00	0.00
90	Various Instruments	2.87	0.64	0.55	0.70	0.51	0.49	24.36	69.92	70.76	0.75	0.27	0.25	0.00	0.00	0.00	0.00

133. The HS chapter-wise average figures reported in Table 5 have been computed by the authors from WITS data. See WORLD BANK, *supra* note 118.

V. UNDER THE SHADOW: TARIFFS PREFERENTIALIZATION AND TRADE REMEDIES GLOBALIZATION

On closer examination, it can be observed that a global applied tariff reset has already taken root. This is evinced by the various preferential trade agreements (PTAs) that have become commonplace in the global economy.¹³⁴ Regardless, since the WTO deals with nearly all trade in goods, a tariff reset at the WTO level would have large-scale implications. Global and US interests would definitely thrive in a scenario where countries agree to reduce their bound ceilings and bind the unbound tariffs, particularly because of the reduced volatility in the trade mechanisms. Such a step will even benefit the countries which reduced the tariffs, as it will promote larger economic growth. It seems as though a tariff reset would lead to an optimum outcome for all the parties involved. However, such thinking neglects a crucial aspect of why the countries negotiated for such high bound rates in the first place.

This Part will first examine the impact of PTAs on tariffs. Further, it will use secondary data to analyze the increasing use of trade remedies by developing countries.

A. *The Impact of Preferential Trade Agreements on Tariffs*

Since the 1990s, there has been a surge in the number of PTAs, leading to a debate on their actual contribution towards multilateral tariff reform.¹³⁵ Tariff preferences extended through PTAs take the following routes. First, the participating countries agree for a positive list, where they decide to grant zero-tariff or lower-tariff treatment to each other's exports either immediately (first-track) or gradually (normal-track). Second, a negative list is prepared, for which the applied tariff remains at the MFN level in the post-bloc period. Finally, the sensitive list includes products for which possible recourse to safeguard measures for a limited period can be permitted. GATT 1994 Article XXIV provisions require the bloc partners to remove tariffs, "with respect to substantially all the trade between the constituent territories

134. See Paul J. Davidson, *Ask Not What the WTO Can Do for RTAs, but What RTAs Can Do for the WTO*, 13 ASIA PAC. L. REV. 47, 48 (2005); Mitsuo Matsushita, *Regionalism and the Disciplines of the WTO: Analysis of Some Legal Aspects under Article XXIV of the GATT*, 13 ASIA PAC. L. REV. 191, 191 (2005); cf. Jung Hur & Larry D. Qiu., *Tariffs and Formation of Free Trade Agreements Networks*, 43 WORLD ECON. 33, 34 (2020).

135. See Julien Chaisse & Mitsuo Matsushita, *Maintaining the WTO's Supremacy in the International Trade Order: A Proposal to Refine and Revise the Role of the Trade Policy Review Mechanism*, 16 J. INT'L ECON. L. 9, 27–31 (2013) (arguing that the proliferation of PTAs may undermine both the basis and consistency of the multilateral international trading order).

of the union,”¹³⁶ which played a crucial role in lowering tariff barriers within PTAs.¹³⁷ However, an all-developing-country PTA may enjoy flexibility on this front, as per the “Enabling Clause” provisions.¹³⁸

The PTAs can lead to significant tariff and trade reforms. For instance, the partner countries competitively negotiate to keep the negative list of the other partner low, so as to enter the partner markets at a lower tariff. It has been noted that in the India–Japan Comprehensive Economic Partnership Agreement (CEPA), India’s negative list consists of 15 percent of the product lines, indicating that the tariff reform commitments have been extended to the remaining tariff lines being traded (i.e., 85 percent).¹³⁹ For instance, in the case of HS 64035111, which represents footwear with outer soles and uppers of leather covering the ankle,¹⁴⁰ while the MFN tariff imposed by India is 25 percent, the imports from Japan through the preferential rules of origin face a duty of 1.8 percent. The corresponding figures for South Korea, Sri Lanka, the Association of Southeast Asian Nations (ASEAN), and Singapore are 0, 0, 5, and 12.5 percent respectively. As a result, the average effective import duty (i.e., AHS) gets reduced significantly.

A PTA can be “trade-creating” if it enables the cheaper exports from the bloc partner countries to replace inefficient home players.¹⁴¹ On the other hand, “trade-diverting” PTAs deny market access to global efficient exporters, favoring the inefficiencies within the bloc instead.¹⁴² It can be noted that, while a PTA can initially be “trade-creating,” the failure to expand over a period eventually leads to trade-

136. GATT 1994 art. XXIV.

137. Special Protocol Relating to Article XXIV of the General Agreement on Tariffs and Trade, Mar. 24, 1948, General Agreement on Tariffs and Trade, 62 U.N.T.S. 56; Understanding of the Interpretation of Article of Article XXIV of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 219; see Gloria O. Pasadilla, *Preferential Trading Agreements and Agricultural Liberalization in East and Southeast Asia* 8–10, 36, 43 (Asia-Pac. Rsch. & Training Network on Trade, Working Paper No. 11, 2006), <https://www.unescap.org/sites/default/files/AWP%20No.%2011.pdf> (last visited Dec. 3, 2021) [<https://perma.cc/2BN4-G7T5>] (archived Dec. 22, 2021).

138. Petros C. Mavroidis, *Dealing with PTAs in the WTO: Falling through the Cracks between ‘Judicialization’ and ‘Legalization’*, 14 WORLD TRADE REV. (SPECIAL ISSUE) s107–s121 (2015).

139. See Ram Upendra Das, *India-Japan Comprehensive Economic Partnership Agreement (CEPA): Some Implications for East Asian Economic Regionalism and RCEP* 15 (Rsch. & Info. Sys. for Developing Countries, Discussion Paper No. 186, 2014), <https://www.crt.org.in/wp-content/uploads/2019/11/PublicationD3.pdf> [<https://perma.cc/Q9PG-4M9Z>] (archived Dec. 23, 2021).

140. Excluding incorporating a protective metal toecap, sports footwear, orthopedic footwear, and toy footwear.

141. See ECONOMICS OF PREFERENTIAL TRADE AGREEMENTS 8–10 (Jagdish Bhagwati & Arvind Panagariya eds., 1996).

142. See *id.*

diversion.¹⁴³ Therefore, the PTAs that progressively embrace new members and encompass a wider geographic area (and consequently, perhaps, more efficient partners) function as the “building blocks” for multilateral trade negotiations.¹⁴⁴ On the other hand, the stagnant blocs that continue to insulate local markets through complex and protectionist rules of origin provisions are the “stumbling blocks” to this process (the “spaghetti bowl” phenomenon).¹⁴⁵ The increasing fragmentation of the production blocs across countries,¹⁴⁶ simultaneous or sequential offshoring of tasks across countries,¹⁴⁷ and greater firm-level involvements in international production networks¹⁴⁸ (IPNs), however, offer policymakers an incentive to adopt further reforms. The urge to participate in regional value chains (RVCs) may motivate PTA member countries to embrace “new WTO-led initiatives that could further multilateralize, or at least plurilateralize, the spaghetti bowl of reciprocal preferences.”¹⁴⁹

Since the 2000s, mega-PTAs (i.e., very large economies)¹⁵⁰ such as the Trans-Atlantic Trade and Investment Partnership (TTIP), the Trans-Pacific Partnership (TPP), the Regional Comprehensive Economic Partnership (RCEP), the EU–Japan EPA, and the China–Japan–Korea (CJK) PTA have attempted to incorporate several WTO-Plus provisions (e.g., competition policy),¹⁵¹ which by definition are

143. *See id.*

144. *See id.* at 5.

145. *See id.* at 5, 53–54.

146. *See generally* Fukunari Kimura, Yuya Takahashi, & Kazunobu Hayakawa, *Fragmentation and Parts and Components Trade: Comparison Between East Asia and Europe*, 18 N. AM. J. ECON. & FIN. 23 (2007).

147. *See generally* Richard Baldwin & Anthony Venables, *Spiders and Snakes: Offshoring and Agglomeration in the Global Economy* (Nat’l Bureau of Econ. Rsch., Working Paper No. 16611, 2010), https://www.nber.org/system/files/working_papers/w16611/w16611.pdf [<https://perma.cc/4WYY-EYL5>] (archived Dec. 23, 2021).

148. *See* Ganeshan Wignaraja, *Engaging Small and Medium Enterprises in Production Networks: Firm-Level Analysis of Five ASEAN Economies* 22 (Asian Dev. Bank Inst., Working Paper No. 361, 2012), <https://www.adb.org/sites/default/files/publication/156216/adbi-wp361.pdf> [<https://perma.cc/6VHS-NX3J>] (archived Dec. 23, 2021).

149. Richard Baldwin, Simon Evenett, & Patrick Low, *Beyond Tariffs: Multilateralising Non-Tariff RTA Commitments*, in *MULTILATERALIZING REGIONALISM: CHALLENGES FOR THE GLOBAL TRADING SYSTEM* 79, 79 (Richard Baldwin & Patrick Low eds., 2009).

150. *See* Billy A. Melo Araujo, *Setting the Rules of the Game: The Rise (and Fall) of Mega-Regionals, Deep Integration and the Role of the WTO*, 21 UCLA J. INT’L L. & FOREIGN AFFS. 151, 181–83 (2017); Jean-Jacques Hallaert, *Insights from the 19th Century Wave of Bilateral Trade Agreements for the WTO Era*, 7 TRADE L. & DEV. 356, 378–80 (2015) (discussing the evolution of mega-PTAs and their relationship with the WTO).

151. “WTO-plus” is commonly used to describe the commitments made by acceding Members during their accessions to the WTO with the contents and levels of obligations exceeding those required by WTO agreements. *See* Juan He, *WTO-Plus Commitments and Emerging Implications for China’s Large Civil Aircraft Manufacturing*, 13 WORLD TRADE REV. 517, 519 (2014); Julia Ya Qin, *The Predicament of China’s “WTO-Plus”*

likely to ensure deeper market access for the partners. However, the poor liberalization performance of past PTAs due to their failure to remove impediments must be acknowledged. Chad Bown noted that the haste to conclude negotiations under mega-PTAs may result in “inefficient levels of domestic regulation, which could lead to domestic political backlash and potentially failed trade agreements.”¹⁵²

B. *Developing Countries and Enforcement of Trade Agreements: The Increasing Use of Trade Remedies by Developing Countries*

To overcome exigent circumstances in the free trade paradigm, states prefer having a political insurance policy. The benefits of having such a measure were in full display in 1995, when different states had to rely on tariff measures. These states did not possess the infrastructural capabilities to impose trade remedies like developed countries. Trade remedies entail measures such as anti-dumping duties (henceforth AD) and subsidies and countervailing measures (SCM) and the associated safeguards.¹⁵³ States treated these measures as an insurance policy against imported goods from firms who were selling below cost or receiving subsidies from their home governments to counteract the incidence of slowing exports to enhance foothold in the domestic market. However, it is important to note that though these trade remedies were out of the reach of developing countries in 1995, that is no longer the case.

It has often been noted in the literature that, while tariff barriers have declined, the demand for contingency protection has intensified from the domestic industries, to which countries often succumb.¹⁵⁴ Tables 6 and 7 attempt to analyze the “echo effect” of AD and SCM protectionism, concerning select major users of these provisions.¹⁵⁵ The horizontal rows of each Table denote select exporting countries while the vertical columns represent the imposers of the contingency

Obligation to Eliminate Export Duties: A Commentary on the China-Raw Materials Case, 11 CHINESE J. INT'L L. 237, 238–39 (2012); Wang Chao, *China's Preferential Trade Remedy Approaches: A New Haven School Perspective*, 21 ASIA PAC. L. REV. 103 (2013).

152. Chad P. Bown, *Mega-Regional Trade Agreements and the Future of the WTO*, 8 GLOB. POL'Y 107, 109 (2017).

153. See Julien Chaisse, Debashis Chakraborty, & Animesh Kumar, *Mastering a Two-Edged Sword: Lessons from the Rules and Litigation on Safeguards in the World Trade Organization*, 13 RICH. J. GLOB. L. & BUS. 563, 563–64 (2014).

154. Robert M. Feinberg, *Trends and Impacts of India's Antidumping Enforcement*, 2 (Off. Econ. Working Paper, US Intern'l Trade Comm'n, No. 2010-10A, 2010), <https://www.usitc.gov/publications/332/EC201010A.pdf> [<https://perma.cc/ZP3S-PBGH>] (archived Mar. 26, 2022).

155. Busch & Pelc, *supra* note 101, at 47 n.8; Ning Meng, Chris Milner, & Huasheng Song, *Differences in the Determinants and Targeting of Antidumping: China and India Compared*, 48 APPLIED ECON. 4083, 4083–87 (2016).

provisions. The cumulative AD and SCM initiations since WTO inception are reported in the Tables, with the corresponding measures shown in the parenthesis.

An interesting regional as well as multilateral AD “echo” pattern can be perceived from Table 6, compiled from the WTO database.¹⁵⁶ The regional “echo”¹⁵⁷ is observed clearly among partners in Latin America within the Southern Common Market (also known as MERCOSUR) (Argentina–Brazil), among the Asian countries (South Korea–China; India–Indonesia), and NAFTA (Canada–Mexico–United States) as well.¹⁵⁸ Along similar lines, the contingency protection “echo” effect can also be observed between two countries, for whom the bilateral trade has deepened not through an RTA-led integration, but by the multilateral tariff reforms. Among the multilateral reform-induced “echo,” evidence from the United States–China, EU–China, EU–India, and United States–India, etc. can be cited. Given the fact that India has so far initiated the maximum number of AD investigations, followed by final measures, there also exists a weaker “echo” effect involving India and its other developing country partners (such as Brazil, China, Indonesia, South Africa, and Turkey) and its developed country partner (South Korea). The underlying objective to protect the local industries from low-cost developing country imports is apparent, as India has cumulatively introduced 26.49 percent of its final AD duties on Chinese imports. There exists a strong one-sided AD activism by both developed countries (Australia and Canada) and developing countries (Argentina, Brazil, Mexico, and South Africa) on Chinese exports, which can be linked to their stage of tariff reforms, essentially leading to weak commitments. Conversely, the outcome is also shaped by the status of China as a nonmarket economy over a considerable period of its WTO membership.

To illustrate this point, this Article takes the example of ADs, which are some of the most widely used trade remedies. When the

156. *Anti-Dumping*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/adp_e/adp_e.htm [https://perma.cc/Y4VS-BHL2] (archived Dec. 23, 2021).

157. For the remainder of Part V.B, the echo effect of contingency protectionism has been shown from the perspective of country pairs. For instance, the reported pair of ‘United States–China’ in this section refers to AD investigations / final duty impositions by United States on China and vice versa.

158. See Bruce D. Fisher, *NAFTA: Testing Ricardo’s Theory of Comparative Advantage by Empirical Evidence Pre-and Post NAFTA*, 15 CHICAGO-KENT J. INT’L & COMPAR. L., no. 2, at 3–4 (2015); Ksenia Polonskaya, *Diversity in the Investor-State Arbitration: Intersectionality Must Be a Part of the Conversation*, 19 MELB. J. INT’L L. 259, 265 (2018); Debashis Chakraborty & Julien Chaisse, *Tightrope Walk Between Faith and Skepticism: India’s “Contingency Plan” for Free Trade*, 15 ASIAN J. WTO & INT’L HEALTH L. & POL. 109–113 (2020).

WTO was formed, India did not have any ADs in force.¹⁵⁹ Since then, AD activism in India has undergone a drastic change, and the country has gained the reputation of being the most frequent user of ADs,¹⁶⁰ even outpacing the United States by a significant margin.¹⁶¹ Other countries such as Argentina, Brazil, Turkey, China, and Vietnam are following suit and are increasingly relying on ADs.¹⁶² In fact, many BRICS countries (BRICS is the acronym coined to associate five major emerging economies: Brazil, Russia, India, China, and South Africa) are increasingly targeting US exporters with ADs. The proclivity to build up capabilities for using trade remedies is prevalent throughout the world. An instance of this can be observed in the Middle East, where countries are actively building up their capabilities in order to wield ADs.¹⁶³ Fearing the impact of the trade remedies on the free trade framework, the United States has even called on Kenya to “establish transparency and due process obligations” on the trade remedy regime.¹⁶⁴

159. See Hylke Vanenbussche & Maurizio Zanardi, *What Explains the Proliferation of Antidumping Laws?*, *ECON. POL'Y*, 93, 100 (2008); Thomas J. Prusa, *Anti-Dumping: A Growing Problem in International Trade*, 28 *WORLD ECON.* 683, 690 (2005).

160. See Prakash Narayanan, *Anti-Dumping in India—Present State and Future Prospects*, 40 *J. WORLD TRADE* 1081, 1081–83 (2006).

161. See Aradhna Aggarwal, *Anti-Dumping Law and Practice: An Indian Perspective* 3 (Indian Council for Rsch. on Int'l Econ. Rels., Working Paper No. 85, 2002), <https://icrier.org/pdf/antiDump.pdf> [<https://perma.cc/9W5V-5DV5>] (archived Dec. 23, 2021).

162. See *id.*; Thomas J. Prusa, *Anti-Dumping: A Growing Problem in International Trade*, 28 *WORLD ECON.* 683, 698–99 (2005); Vandenbussche & Zanardi, *supra* note 157, at 98–99.

163. See generally United Arab Emirates—Notification of Laws and Regulations Under Articles 18.5, 32.6 and 12.6 of the Agreements, WTO Doc. G/ADP/N/1/ARE/2/Suppl.1 (Oct. 5, 2018), <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/ADP/N1ARE2S1.pdf> [<https://perma.cc/5327-UUMM>] (archived Dec. 23, 2021) (notifying WTO members of the recent enactment of anti-dumping laws by the United Arab Emirates).

164. Busch, *supra* note 46; OFF. OF THE U.S. TRADE REPRESENTATIVE, UNITED STATES-KENYA NEGOTIATIONS: SUMMARY OF SPECIFIC NEGOTIATING OBJECTIVES 13 (May 2020), https://ustr.gov/sites/default/files/Summary_of_U.S.-Kenya_Negotiating_Objectives.pdf [<https://perma.cc/JM6V-AY4B>] (archived Jan. 8, 2022).

**Table 6: Anti-Dumping Usage Matrix Among Select Countries
(01/01/1995–12/31/2019)¹⁶⁵**

Exporting Countries	Importing Countries												Global Total	Select Total
	Argentina	Australia	Brazil	Canada	China	European Union	India	Indonesia	Korea, Republic of	Mexico	South Africa	Turkey	United States	
Argentina	-	-	12 (5)	2 (0)	-	1 (1)	-	-	1 (0)	1 (1)	1 (0)	-	6 (7)	48 (24)
Australia	2 (1)	-	3 (0)	-	1 (0)	2 (2)	4 (3)	4 (1)	-	-	5 (3)	-	7 (3)	34 (16)
Brazil	65 (45)	4 (1)	-	10 (5)	2 (2)	7 (6)	10 (11)	-	2 (0)	6 (10)	10 (5)	2 (2)	17 (14)	159 (135)
Canada	1 (1)	6 (1)	3 (2)	-	2 (2)	1 (0)	6 (4)	1 (0)	3 (2)	1 (2)	-	1 (1)	24 (9)	52 (25)
China	122 (87)	59 (30)	99 (73)	43 (33)	-	138 (99)	232 (187)	30 (15)	33 (26)	62 (45)	40 (21)	83 (77)	173 (145)	1392 (1033)
EU	1 (0)	-	9 (5)	-	31 (25)	-	70 (51)	2 (1)	-	1 (1)	-	1 (0)	-	133 (94)
India	17 (12)	8 (1)	20 (12)	10 (6)	11 (10)	38 (21)	-	15 (9)	7 (5)	4 (4)	22 (12)	14 (11)	42 (25)	241 (145)
Indonesia	8 (6)	27 (11)	6 (4)	5 (4)	6 (4)	17 (14)	42 (33)	-	8 (4)	1 (1)	9 (5)	9 (9)	23 (14)	218 (161)
Korea, Republic of	16 (13)	37 (21)	23 (13)	18 (15)	42 (35)	32 (14)	74 (51)	19 (6)	-	6 (5)	16 (16)	14 (11)	58 (35)	447 (235)
Mexico	5 (4)	-	14 (9)	4 (3)	1 (1)	3 (3)	6 (4)	-	-	-	-	-	29 (20)	85 (55)
South Africa	10 (6)	6 (3)	9 (7)	5 (3)	2 (1)	4 (4)	15 (10)	-	-	-	-	-	19 (11)	80 (55)
Turkey	4 (3)	3 (0)	4 (1)	9 (7)	1 (1)	17 (3)	10 (7)	3 (1)	-	1 (0)	4 (2)	-	20 (12)	103 (58)
United States	17 (7)	14 (7)	43 (24)	19 (12)	54 (43)	17 (10)	44 (30)	2 (1)	15 (9)	31 (24)	10 (6)	4 (4)	-	298 (191)
Total	388 (267)	351 (168)	418 (266)	247 (160)	288 (232)	521 (332)	972 (706)	142 (65)	152 (101)	161 (137)	234 (141)	229 (199)	728 (502)	5944 (3958)
Select Total	268 (185)	164 (75)	245 (155)	125 (88)	153 (124)	277 (177)	513 (391)	76 (34)	69 (46)	114 (93)	117 (70)	128 (115)	418 (295)	-

165. Table 6 has been constructed by the authors from WTO ADA Database. See *Anti-Dumping*, *supra* note 156.

The scenario for SCM initiations is summarized in Table 7, while final measures are shown in the parentheses of the same table. The data is obtained from the corresponding WTO database.¹⁶⁶

Table 7: Subsidies and Countervailing Duties Usage Matrix Among Select Countries (01/01/1995–12/31/2019)¹⁶⁷

Exporting Countries	Importing Countries											Select Total
	Australia	Brazil	Canada	China	European Union	India	Mexico	South Africa	Turkey	United States	Total	
Australia	-			1 (0)	1 (1)					1 (0)	3 (1)	3 (1)
Brazil		-	3 (1)				0 (4)			8 (5)	12 (10)	11 (10)
Canada			-							14 (5)	14 (5)	14 (5)
China	17 (11)	1 (1)	26 (22)	-	14 (8)	8 (6)	1 (1)	1 (0)	2 (0)	89 (69)	169 (123)	159 (118)
European Union			1 (1)	3 (2)	-		1 (1)				15 (12)	5 (4)
India	1 (1)	7 (4)	9 (5)	2 (1)	21 (14)	-	3 (2)	9 (4)	1 (1)	34 (20)	89 (52)	87 (52)
Indonesia	1 (0)	2 (1)	2 (1)		7 (3)	3 (0)				12 (6)	28 (11)	27 (11)
Korea, Republic of			3 (1)		7 (2)	1 (0)		1 (0)		18 (11)	31 (15)	30 (14)
Mexico							-			2 (1)	2 (1)	2 (1)
South Africa	1 (0)	1 (0)			1 (0)			-		2 (2)	7 (4)	5 (2)
Thailand		1 (0)	3 (1)		5 (1)	2 (0)				7 (1)	20 (3)	18 (3)
Turkey	1 (0)		4 (1)		2 (1)				-	13 (8)	21 (10)	20 (10)
United States	1 (1)		3 (0)	7 (5)	3 (1)					-	21 (10)	14 (7)
Viet Nam	2 (0)		4 (2)		1 (0)	3 (1)				7 (4)	17 (7)	17 (7)
Total	31 (16)	12 (10)	72 (35)	13 (8)	86 (42)	22 (7)	6 (11)	13 (5)	3 (1)	260 (160)	577 (320)	
Select Total	24 (13)	12 (6)	58 (35)	13 (8)	62 (31)	17 (7)	5 (8)	11 (4)	3 (1)	207 (132)		-

The “echo” effect for the SCM measures is visible in both regional (e.g., United States–Canada) as well as multilateral reform-led outcomes (e.g., China–United States, China–EU), though the evidence is relatively weaker. No strong “echo” involving India and other developing countries on the SCM front relates to the fact that proving more than 5 percent *ad valorem* subsidization in the partner markets might turn out to be a complex exercise for the developing countries.¹⁶⁸ As a case in point, while India so far has initiated three investigations against Indonesia, it could not proceed with final measures on either

166. See *Subsidies and Countervailing Measures*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/scm_e/scm_e.htm [<https://perma.cc/59ED-6G6E>] (archived Dec. 24, 2021); see also Sacchidananda Mukherjee, Debashis Chakraborty, & Julien Chaisse, *Curtailing Subsidy Wars in Global Trade: Revisiting the Economics of World Trade Organization Law on Subsidies*, SYRACUSE J. INT’L L. & COM. 1, 14–22 (Fall 2014) (using WTO SCM data to analyze global trends in the initiation of countervailing duty initiations and measures).

167. Table 7 has been constructed by the authors from WTO SCM Database. See *Subsidies and Countervailing Measures*, *supra* note 166.

168. See generally Bruce A. Blonigen & Wesley W. Wilson, *Foreign Subsidization and Excess Capacity*, 80 J. INT’L ECON. 200 (2010).

case. The corresponding numbers involving China are eight and six, respectively. It is observed that many SCM cases against lower cost developing countries—namely, Brazil, China, India, Indonesia, Thailand, and Vietnam—have been initiated by their developed counterparts. Of the total initiated cases, Canada (10.94 percent of total measures), the EU (13.13 percent), and the United States (50.00 percent) have taken the lead in this sphere, which is a joint function of their deeper commitments (lower bound duty), tariff reforms (i.e., strong commitment), and superior trade-administrative capability as well.

VI. CONCLUSION

Historically and even to this day, tariffs have been regarded as a key revenue-generating instrument, particularly by developing countries. Contrasted with the internal taxation system, tariffs at the border tend to be simple and effective. As internal taxation mechanisms evolve, or specialization in core services deepen, states tend to rely less on merchandise tariffs. GATT 1944 in Article XXVIIIbis:3 recognizes the role of tariffs as a revenue generation mechanism for developing countries and mandates the other WTO members to take these fiscal (developmental, strategic, and other) considerations into account while engaging in tariff negotiations.

During the 1990s, the countries agreed to cede part of their sovereign rights to set import tariffs freely by agreeing on tariff binding, which set an upper limit on the duty structure.¹⁶⁹ As the mindset during this period was conducive to globalization, the transition to tariff binding was facilitated. From 2001 to 2010, countries came to understand the WTO system through a series of policy iterations, the limits of which were often tested and vindicated at the WTO Dispute Settlement Body. The resulting reforms lowered the applied tariff regimes *vis-à-vis* the fixed benchmark of bound rates, and the deepening of tariff waters generated the demand for bound tariff reforms. The series of proposed WTO reform modalities during the 2008–2009 period, however, failed to reach a common ground, owing to differences over the proposed coefficients and perceived threats to domestic players from rising imports.

In contrast, a phase of deglobalization has come in recent times, when the countries are either more comfortable with further reforms within close PTA quarters or utilizing the loopholes available through WTO-sanctioned trade remedies. The existence of tariff overhang allows countries to safely increase their applied tariffs without violating core WTO principles. In addition, the recent COVID-19 pandemic-led

169. See generally Stephen Tokarick, *How Large Is the Bias against Exports from Import Tariffs?*, 6 WORLD TRADE REV. 193 (2007).

recession has brewed calls for domestic manufacturing consolidation within several WTO member states. The political economy of the tariff “reset” call by the Trump administration and lukewarm response by other countries to the same needs to be viewed in this wider context.

If the tariff reset talks in the WTO forum gain momentum, at the behest of the Biden administration, it is likely that the stream of resulting events would affect the discussion in Washington over trade remedies as well. Like the discussion on bound tariff rates, the debate on trade remedies is also out of date. The adoption of trade remedies by other countries is pushing the United States to be increasingly on the offensive against their usage. If the Biden administration backs tariff reset negotiations at WTO to accommodate the rising applied tariff in the United States, the resulting dissent may cause partner countries to retaliate either through increasing recourse to trade remedy measures or through elevated applied tariffs. However, a rise in applied tariffs would also underline United States’ tariff overhang and displease United States trade partners. Therefore, US activism on a tariff “reset” may end up opening the trade remedy equivalent of a Pandora’s box.
